

November 4, 2013

**VIA ELECTRONIC MAIL  
AND FEDERAL EXPRESS**

Andrew Goldman (3RC41)  
United States Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

Re: **Metro Container Site  
Trainer, Delaware County, Pennsylvania**

Dear Mr. Goldman:

This letter is written jointly on behalf of Veolia ES Technical Solutions, L.L.C., Stauffer Management Company LLC (litigation agent for Bayer CropScience, LP), Rohm and Haas Company, E. I. du Pont de Nemours and Company, and Tunnel Barrel & Drum Co., Inc. to propose an agenda in anticipation of the November 7 in-person meeting regarding the Metro Container Site.

We offer the following agenda to outline the topics we will expect to address at the meeting:

- **Notification of Potentially Responsible Parties**
  - EPA efforts to notify other potentially responsible parties, including a list of all PRPs from the previous removal actions that have been notified with regard to the current removal action.
  - EPA efforts to avoid fund-led cleanup (including the current removal action) and utilize PRP collaboration for the RI/FS.
  - EPA communications with Lyondell Chemical Worldwide, Inc. and Tasty Baking Company.
- **Scope of Work**
  - **Prior Work:**
    - What work has been performed on the Site since the completion of the last remediation?
    - Who conducted the work?

○ **Current Removal Action:**

- What work is currently being performed at the Site?
- What is the schedule for the current work?
- How much time will be allotted for the soil/sludge removal after the current work at the site is completed?
- What cleanup goals are being used at the Site, given regional background concentrations of metals and PCBs?
- What technical data support the remedial goals for the Site?
- How does the current removal action comply with the NCP and future remedies?

○ **Future Work:**

- What is the full scope of work intended for the Site?
- What is the status of any RI/FS?
- What is the proposed scope for any RI/FS?
- What is the schedule/timeframe for any RI/FS?

• **Cost Estimates**

- Please provide a detailed cost estimate for the full scope of work (current removal action and the anticipated RI/FS).
- What costs have already been expended?

We look forward to addressing the foregoing issues with EPA at the November 7, 2013 meeting.

Thank you.

— Veolia ES Technical Solutions, LLC  
— Stauffer Management Company LLC (litigation agent for Bayer CropScience, LP)  
— Rohm and Haas Company  
{ E. I. du Pont de Nemours and Company  
{ Tunnel Barrel & Drum Co., Inc.

**Rose, Kenneth**

---

**From:** Goldman, Andrew  
**Sent:** Thursday, July 24, 2014 8:17 AM  
**To:** Rose, Kenneth  
**Subject:** RE: Metro -- Administrative Record

ATTORNEY-CLIENT PRIVILEGED.

Ken—

1. I think your revised AR language is fine.
2. Unless I'm mistaken, Chris circulated comments on the BayerCropScience letter only and a majority of the comments were BCS-specific.
  - a. I do not think that Chris's changes to the Introductory paragraph are necessary. While they may add specificity and detail, we do not need that to support the SNL. I would ask you to ask Chris if he sees anything inaccurate in the original formulation.
  - b. With respect to Chris's comment about VOC causing an increase in the desorption of PCBs, this too is detail which is not necessary for issuance of the SNL and which will likely be discussed in the RI. Thus I do not see the need to add anything relating to this issue.
  - c. With respect to Chris's 2d comment (Pg. 2, "warranted") I think the original formulation is fine. I am not concerned that the recipients will confuse the trigger for the RIFS in the way Chris describes and, in addition, it does not matter if they are confused about the trigger. What matters is that (1) they are liable, (2) EPA wants an RI/FS performed, and (3) EPA is offering them an opportunity to do it themselves under EPA oversight.
  - d. Chris's next comment (Pg. 5) is the AR issue discussed above.
3. You are the keeper of the SNL draft. I suggest you talk to Chris about any inaccuracies in the BCS facts in the original Introductory paragraph (feel free to say that you talked to me and that I'm pushing for less detail and not more). Assuming Chris is comfortable with the original BCS factual recitation, make the AR language change to all letters and deliver to me for substitution in the concurrence package (you left the package with me a week or so ago).
4. I have still not received Chris's comments on the draft AOC; have you?

Call with any questions. Thanks.

Andy



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Sr. Assistant Regional Counsel

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**From:** Rose, Kenneth  
**Sent:** Thursday, July 24, 2014 6:38 AM  
**To:** Goldman, Andrew  
**Subject:** RE: Metro -- Administrative Record

Andy,  
Here is the amended administrative record language for the Metro SNL; please let me know if this is okay.

Are you addressing Chris's comments from the other day and going to be circulating a revised SNL?

Just a heads' up that I will be out of the office on vacation the week of August 4.

Thanks,  
Ken

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---

**From:** Goldman, Andrew  
**Sent:** Wednesday, July 23, 2014 2:57 PM  
**To:** Rose, Kenneth  
**Subject:** RE: Metro -- Administrative Record

I suppose it's ok to mention that we will establish an AR supporting the selection of a response.

I'm not too comfortable with you setting aside documents for that purpose as you are not the RPM who will need to make the call of the documents relied on or considered in selecting the remedy.



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**From:** Rose, Kenneth  
**Sent:** Wednesday, July 23, 2014 2:26 PM  
**To:** Goldman, Andrew  
**Subject:** RE: Metro -- Administrative Record

Andy,

In talking to Carlyn it seems we should put in the SNL a reference to the fact an AR will be established when a decision is made based on the RI/FS. I will send some changed language for that section.

We should, however, still start putting together the AR to be prepared for the future. I had started gathering documents when it looked like we were going the UAO route.

-Ken

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**From:** Goldman, Andrew  
**Sent:** Wednesday, July 23, 2014 1:51 PM  
**To:** Towle, Michael  
**Cc:** Sklaney, Christopher; Rose, Kenneth  
**Subject:** RE: Metro -- Administrative Record

ATTORNEY-CLIENT PRIVILEGED

Mike's question caused me to go back to AR Online where IO confirmed that the AR for the 8/2013 Action Memo has been established. This is an SNL for an RIFS. There is no AR specifically set up for this type of action. Why do we refer to an AR in the draft SNL???



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**From:** Towle, Michael  
**Sent:** Wednesday, July 23, 2014 1:42 PM  
**To:** Goldman, Andrew; Rose, Kenneth  
**Cc:** Sklaney, Christopher  
**Subject:** Re: Metro -- Administrative Record

Please clarify for me - what AR are we talking about ?

**From:** Goldman, Andrew  
**Sent:** Wednesday, July 23, 2014 9:22:38 AM  
**To:** Rose, Kenneth  
**Cc:** Sklaney, Christopher; Towle, Michael  
**Subject:** RE: Metro -- Administrative Record

ATTORNEY-CLIENT PRIVILEGED

Mike Towle (as the OSC responsible for the removal) will need to review this information and supplement it with any additional documentation he believes needs to be in the AR. Once this is done, the file room will contact me to review the docs Mike has "nominated" for inclusion in the AR.



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**From:** Rose, Kenneth  
**Sent:** Friday, July 18, 2014 8:29 AM  
**To:** Goldman, Andrew  
**Cc:** Sklaney, Christopher  
**Subject:** Metro -- Administrative Record

Andy,

I listened to your voicemail from yesterday. I have put documents related to my 104e letters, general notice letters, etc. in the following file: L:/share/metro container/UAO 2014/Administrative Record Documents. I did this for you and Chris to review and decide what needs to go in the Administrative Record and as a repository for Chris's documents, also for review, prior to going up online. It is my understanding that the OSC and/or RPM is responsible for compiling and uploading the Administrative Record documents online so once the documents are settled Chris and Mike Towle should be uploading them.

If you have any questions, please give me a call. I am in today until about 5pm.

Thanks,  
Ken

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*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

**THIS REPORT HAS BEEN PREPARED IN ANTICIPATION OF LITIGATION AND IS  
ENFORCEMENT-CONFIDENTIAL. DO NOT RELEASE THIS REPORT UNDER THE  
FREEDOM OF INFORMATION ACT.**

U.S. ENVIRONMENTAL PROTECTION AGENCY

REGION III

1650 ARCH STREET

PHILADELPHIA, PENNSYLVANIA 19107

**PRE-REFERRAL NEGOTIATION CIVIL LITIGATION REPORT**


For a Civil Action Under  
Sections 106 and 107 of the Comprehensive Environmental  
Response, Compensation, and Liability Act ("CERCLA")  
as amended by the  
Superfund Amendments and Reauthorization Act of 1986 ("SARA")  
42 U.S.C. §§ 9606 and 9607.

In the

U.S. DISTRICT COURT  
FOR THE DISTRICT OF 

Commented [k1]: Need District for SE Penna.

Site: Metro Container Corporation Superfund Site  
Delaware County, Pennsylvania

Defendants: See Attachment I 

Commented [k2]: Create from Excel file

Date Referred:

Regional Contacts:

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**TABLE OF CONTENTS**

Commented [k3]: To be updated when done

I.	INTRODUCTION.....	1
II.	DESCRIPTION OF THE SITE AND SITE HISTORY.....	2
A.	<u>Site Description</u> .....	2
B.	<u>Site History</u> .....	2
C.	<u>Enforcement Actions</u> .....	4
D.	<u>Deposed Witnesses</u> .....	6
III.	IDENTIFICATION OF POTENTIALLY RESPONSIBLE PARTIES ("PRPS") AND DEFENDANTS.....	9
A.	<u>Introduction</u> .....	9
B.	<u>Evidence</u> .....	9
C.	<u>Recommended Defendants: PRPs Who Will Be Sent Special Notice Letters For the RD/RA</u> .....	10
1.	Owner/Operator.....	10
2.	Former Owners/Operators and Transporters.....	11
3.	Defendants: Arranger PRPs.....	13
4.	Defendants in Bankruptcy.....	59
D.	<u>Remaining PRPs Not Receiving Special Notice Letters for the RD/RA</u> .....	61
1.	Orphan Parties:.....	61
2.	International Parties.....	61
E.	<u>Defendants' Steering Committee/Communications</u> .....	62
1.	Steering Committee.....	62
2.	Communications.....	62
IV.	LEGAL DEFENSES.....	63
A.	<u>Defenses Raised by Owner/Operator Central Chemical Company</u> .....	63
B.	<u>Defenses Raised by Former Operators</u> .....	63
1.	Defenses to "Operator" Liability.....	64
2.	Defenses to "Transporter" Liability.....	65
3.	Third Party Defenses .....	66
C.	<u>Likely Defenses Raised by Generators</u> .....	67
1.	The Divisibility Defense.....	67
2.	Defenses to "Arranger" Liability.....	68
3.	Failure to State a Claim.....	68



*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

V.	STATUTE OF LIMITATIONS.....	69
VI.	SUMMARY OF RESPONSE COSTS.....	70
VII.	ADMINISTRATIVE RECORD.....	70
VIII.	RECORD OF DECISION.....	70
IX.	NATURAL RESOURCE DAMAGE TRUSTEES CONTACT.....	70
X.	RELATED CIVIL AND/OR CRIMINAL INVESTIGATIONS.....	70
XI.	PRE-REFERRAL SETTLEMENT STRATEGY.....	71
XII.	LEGAL, POLICY AND STRATEGIC CONSIDERATIONS.....	72
	A. <u>Enforcement Activity Contemplated</u> .....	72
	B. <u>Legal Basis for Special Notice Letters</u> .....	72
	C. <u>Legal Basis for Filing a Complaint Seeking Relief for Past CERCLA Costs Under §107, 42 U.S.C. § 9607</u> .....	73
	1. Release or Threatened Release of Hazardous Substances into the Environment.....	73
	2. From a Facility.....	75
	3. Which Causes the United States to Incur Response Costs..	75
	4. For Which the United States Seeks Recovery From a Party falling into a Liability Category Described in Section 107 of CERCLA.....	77
	D. <u>Legal Basis for Filing Complaint Seeking Injunctive Relief Under CERCLA §106, 42 U.S.C. § 9606</u> .....	79
XIII.	SPECIAL NEEDS FOR HEADQUARTERS AND DEPARTMENT OF JUSTICE...	81
XIV.	LIST OF ATTACHMENTS.....	83

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

## **I. INTRODUCTION**

This Pre-Referral Negotiation Civil Litigation Report ("PRN") has been prepared in anticipation of negotiations for remedial action under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606 and 9607, in connection with the Metro Container Superfund Site ("Site") in Trainer, Delaware County, Pennsylvania. The purpose of this PRN is to enter into negotiations with various entities for remedial investigation/feasibility study ("RI/FS") for the Site.

There are nine (9) proposed defendants at this Site (collectively, "Defendants"). The current owner, Trainer Industries LLC ("TI"), has a signed covenant not to sue/prospective purchaser agreement with EPA and is not considered a defendant at this Site. Additionally, the current operator at the Site, Service Painting, Inc. ("SPI") is an affiliate of TI and is therefore covered by TI's covenant not to sue. One of the defendants, Bayer CropScience, Inc. ("CropScience"), is liable as successor to Stauffer Chemical Company ("Stauffer"), which was a former owner and operator of the Site at the time disposal of hazardous substances occurred at the Site. Stauffer manufactured carbon disulfide, a hazardous substance under 40 CFR § 302.4, and oversaw and directed the development of the original waste disposal lagoon at the Site adjacent to Stoney Creek in the 1950s. The lagoon was built from a pond that fed into Stoney Creek, which enabled hazardous substances to be transported into the creek. As a result of this activity, Stauffer caused the release of hazardous substances at the Site, as well as the transportation and disposal of hazardous substances at the Site.

The remaining eight (8) defendants (see Section III.C.3) arranged for the transportation of drums or transported drums containing residual hazardous substance waste to the Site in order that such drums could be cleaned and reconditioned and ultimately resold to the defendants or to other companies ("Arranger Defendants").

## **II. DESCRIPTION OF THE SITE AND SITE HISTORY**

### **A. Site Description**

The Site comprises approximately 11 acres of land owned by TI and is located at 2<sup>nd</sup> and Price Streets in the Borough of Trainer, Delaware County, Pennsylvania, at 39°49'29.93" north latitude and 75°23'56.57" west longitude, as measured at the southern corner of the former main drum process and reconditioning building. [final hrs package] TI acquired the Site property in 2001 and is the current owner of the Site. [title search]

The Site property was conveyed to Stauffer via five separate transactions that occurred between 1922 and 1960. [title search] The first deed was dated February 17, 1922 and was between Samuel Barrow and Stauffer Chemical Company. [title search] A second sale to Stauffer occurred on November 22, 1922 when Cambridge Trust Corporation sold part of the Site property to Stauffer. [title search] On August 12, 1933, Albert Walter of Chauncey, New York

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

conveyed additional parcels of the Site property to Stauffer. [title search] Gertrude Howard deeded additional acres to Stauffer on May 20, 1936. [title search] The final sale of Site property to Stauffer occurred on January 15, 1960 when the executors of the Will of Albert Walter granted property to Stauffer. [title search]

On December 20, 1962, Stauffer granted the Site property to Joseph A. Ries Company by deed recorded on April 26, 1963 at book 2047, page 229. [title search] On January 24, 1969, Alfred J. Laupheimer, Trustee in Bankruptcy of Joseph A. Ries Company ("Ries"), granted the Site property to Universal Container Corporation by deed recorded January 28, 1969. [title search] On December 3, 1970, Universal Container Corporation ("UCC") granted 8.16 acres of the Site property to Delaware County Industrial Corporation ("DCIC") by deed recorded December 4, 1970 at book 2386, page 749. [title search] DCIC granted 8.16 acres of the Site property to First Union Commercial Corporation ("First Union") on February 4, 1983 by deed recorded February 15, 1983 at book 61, page 623. [title search] UCC granted 2.2452 acres of Site property to First Union on February 11, 1983 by deed recorded on February 15, 1983 at book 61, page 628. [title search] First Union granted all of the Site property to Metro Container Corporation ("Metro") on February 11, 1983 by deed recorded February 15, 1983 at book 61, page 632. [title search] Chad F. Kenney, Sheriff of the County of Delaware, granted the Site property to TI on February 8, 2001 by deed recorded February 14, 2001 at book 2125, page 2161. [title search]

**B. Site History**

19<sup>th</sup> Century:

Industrial activity at the Site dates back into the 19<sup>th</sup> century. In the 1880s and 1890s, the Delaware Oil-Refining Company ("DORC") operated at the Site. [HRS Record, MWH Americas Report, History of Delaware County Chapter XXXV] The Delaware Oil Works, as it was known, had eight brick and frame buildings that covered about half an acre. [history of delco chapter xxxv] DORC manufactured paraffine oil and wax at the Site. [history of delco chapter xxxv] The facility's capacity was estimated at 350 barrels of oil and fifty barrels of wax per week. [history of delco chpt xxxv]

1900 – 1920:

In the early 20<sup>th</sup> century, the Site was occupied by the Manufacturers Paraffin Company ("MPC"). [HRS Record, MWH Americas Report] MPC's operation at the Site included dozens of iron storage tanks, refinery stills, an agitator house, a boiler house, open water condensers, finished product storage facilities, and a packing shed and barreling house for the finished wax products. [HRS Record, MWH Americas Report] During the tenure of both DORC and MPC, there was a pond in the southwest corner of the Site property where former disposal lagoon came to be located. [MWH Americas Report]

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

1920 – 1963

Stauffer Chemical Company ("Stauffer") began operating a chemical manufacturing plant at the Site in 1920 and operated there until 1959. [HRS Record, MWH Conoco 2005 Report, 4/18/12 Stauffer Mgt 104e response] Stauffer produced a variety of chemicals at the Site including sulfuric acid, carbon disulfide, and dithiocarbonic anhydride. [HRS Record, MWH Conoco 2005 Report] Carbon disulfide is one of the contaminants of concern found at the Site. [HRS Record] It is a colorless, flammable liquid prepared from preheated hydrocarbons (natural gas) with vaporized sulfur in the presence of a catalyst. [MWH Conoco 2005 Report] Raw materials used in the process included carbon (charcoal or coke) and sulfur. [stauffer mgt 104e response] Sodium hydrosulfide production was added in 1949. [stauffer mgt 104eresponse] Production of this chemical included the scrubbing of hydrogen sulfide with caustic soda. [stauffer mgt 104e response]

The three principal buildings on the Site were constructed by Stauffer during its tenure at the Site. These buildings include the office building, the locker room (connected to the office building), and the former drum reconditioning building, which was the "oven building" during Stauffer's term of occupancy. [HRS Record, MWH Conoco 2005 Report] Stauffer constructed a waste disposal lagoon on the Site sometime between 1953 and 1959 based on analyses of historical maps and aerial photographs of the Site. [HRS Record, MWH Conoco 2005 Report] This waste disposal lagoon was in all likelihood developed from the pond that was located in the same area of the Site property and was adjacent to Stoney Creek, but that has since disappeared. [HRS Record, MWH Americas Report] The lagoon may have been dredged prior to Stauffer's closing and sale of the facility. [stauffer mgt 104e response] It is known that by 1982, the unlined lagoon had been filled-in with soil and fill materials and is not currently accessible. [HRS Record, Hydrogeologic Investigation of Universal container 1982]

Commented [k4]: Referenced by site assessment, so need copy from them

1963-1983:

Stauffer ceased manufacturing at the Site in about 1959. [HRS Record, MWH Conoco 2005 Report] On April 26, 1963, the Site was purchased by the Joseph A. Reis Company ("Reis") and converted into the first of three steel drum recycling facilities that would operate at the Site over the next 25 years. [HRS Record, MWH Conoco 2005, Title Search] Under Reis, the buildings at the Site underwent significant changes to allow for the conversion from chemical manufacturing to drum reconditioning. Paint spraying rooms and storage areas for paints and drums were created, and a shipping room was added on to the oven building. [MWH Conoco 2005 Report] Maps and aerial photographs from this time show a "pond" (almost certainly the waste lagoon) in the area of the Stauffer waste lagoon and containing a black liquid. [MWH Conoco 2005, HRS Record] It is believed that the black liquid was wastewater and sludge from Reis's drum cleaning operation. [MWH Conoco 2005 Report]

Reis filed for bankruptcy sometime prior to January 1969 when the Site property was granted by the bankruptcy trustee to UCC. [title search, MWH conoco Report, HRS Record]

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Pre-Referral Negotiation Report*

UCC continued drum reclamation and reconditioning operations at the Site until 1983 when the property, which had been owned since 1970 by DCIC and then First Union, was granted to Metro. [Title Search, MWH Conoco 2005 Report, HRS Record] UCC installed a wastewater treatment system on the Site in 1971. [HRS Record] By 1977, a closed loop system for treating and recycling rinse water was in place, which included an open-top/uncovered concrete holding tank that was a 50-foot long, 20-foot wide, 13-foot deep structure that extended four feet above the ground surface and was located just north of the waste disposal lagoon. [HRS Record] Historical photos indicated that this structure had existed since Stauffer's tenure at the Site; however, it is unknown what Stauffer used it for. [HRS Record] While originally part of UCC's wastewater treatment system, the holding tank ultimately was converted to a storage area for untreated wastewater and sludge as UCC slid toward bankruptcy in the late 1970s to early 1980s. [HRS Record]

1983 – 1990:

Metro acquired the Site property from First Union on February 15, 1983 concurrent with First Union's acquisition of the property from DCIC. [title search, HRS Record, MWH Conoco 2005 Report] Metro operated a drum reconditioning facility at the Site through 1988. In December 1987, Metro declared bankruptcy. During its tenure, Metro received 450,000 to 500,000 drums per year. [HRS Report] These drums came from a variety of customers across the petroleum and chemical industries, as well as from other drum reconditioners. [HRS record, 1988 and 2012 104e responses] The drums often contained residues of oil, gasoline, solvents, paint, and other hazardous substances. [HRS Record, 104e responses] Metro received the drums and stored them on the west end of the facility. They were then moved into the drum reclamation building via a conveyor. In the drum reclamation building the drums were emptied into tanks and pre-flushed prior to caustic being applied to the exterior to remove paint. The outside of the drums were rinsed before undergoing two cycles of interior cleaning with caustic. [hrs record, mwh Conoco 2005 report] Hydrochloric acid was used to strip any residue from the interior of the drums, which was followed by two cycles of cold rinsing. After this the drums were dried, de-dented and leak tested, then dried again, repainted and baked. From there the refurbished drums were moved to a warehouse to await shipment to customers. [hrs record, mwh Conoco 2005 report] Storage tanks were located throughout the property for the recovering of product and sludges from the drums and also for the storage of raw materials used in the reclamation process such as acids, alum caustic, toluene, No. 5 fuel oil, waste oil, spent caustic, wastewater, chemicals, and paints. [hrs record, mwh Conoco 2005 report, hrs #19]

Ostensibly the fluids generated by Metro in the drum cleaning process were treated to remove oil and grease, followed by pH adjustment and flocculation. [hrs record and mwh Conoco 2005 report] This treated wastewater was then decanted and reused as rinse water in the drum cleaning process, with about ten percent of each day's reused rinse water removed and replaced by fresh water. The removed water was reportedly discharged to the Delaware County Regional Water Quality Control Authority system after additional treatment and pH adjustment. [hrs record, mwh Conoco 2005 report, hydrologic investigation of UCC]

#### 1990 – 2012

The Site property was vacant and unused following the PRP-lead drum removal action in 1990 [1989 AOC] and until it was acquired by Trainer in 2001. [title search, trainer ppa] Trainer and EPA signed an Agreement and Covenant Not to Sue on xxxx, 2000 (EPA Docket No. CERC-PPA-99-06) for which Trainer paid to EPA \$15,000. [trainer ppa] Trainer leases the property to a related company, Service Painting, Inc. ("SPI"), which provides painting services for petrochemical refineries and industrial facilities. [trainer 104e response] Between 2002 and 2008, SPI used the property at the Site for offices and some storage. Beginning in 2008, however, SPI began performing about ten percent of its painting services at the Site. These services include sandblasting and painting of pipes. [trainer 104e response] Sandblasting is performed on new pipes delivered by customers to remove part of the metal pipe surface and prepare the pipe for painting. Originally this was done outside near the old lagoon, but has since been moved inside the warehouse building. When sandblasting was done outside, SPI placed bales of hay around the lagoon and between the sandblasting area and the lagoon. [trainer 104e response] Until late 2011, painting of the pipes also occurred outside in the same general area as the sandblasting took place. In 2012, SPI moved painting operations inside the warehouse along with the sandblasting operation. [trainer 104e response] SPI prevented any paint runoff from reaching Stoney Creek via the use of hay bales and plastic sheets on which the pipes were placed prior to being painted. [trainer 104e response] SPI stores and uses thinners and solvents in its painting process. These materials are stored in another warehouse on the property in 5-gallon buckets. [trainer 104e response] Additionally, SPI has a 2000-gallon, above ground storage tank for No. 2 fuel oil at the Site. [trainer 104e response] Diesel fuel is stored in 5-gallon cans in the warehouse building and are taken to customer sites for use. [trainer 104e response] SPI's waste sand is tested by an environmental firm prior to being disposed of. As the waste does not contain greater than trace amounts of any hazardous substances (barium, cadmium, and lead) it is treated as non-hazardous waste by Water Management, the disposal company. [trainer 104e response] SPI's operations do generate paint waste, which is stored in drums until it is disposed of, which occurs every 1-2 years. [trainer 104e response] The epoxy paints used by SPI contain below regulatory limit levels of xylene, ethylbenzene, and 1-butanol. [trainer 104e response] The paint waste is picked up by Veolia Environmental Services, who also disposes of the waste. SPI is not considered a PRP at this time as it is covered by TI's Agreement and Covenant not to Sue. As there is no evidence that SPI's activities at the Site have contributed to or negatively impacted conditions at the Site, SPI is not being considered as a defendant in this action.

#### Regulatory Overview

Regulatory involvement at the Site dates back to the 1960s and Ries's tenure at the Site, and includes citations of both UCC and Metro. The earliest recorded notice of violation ("NOV") was issued by Pennsylvania Department of Health ("PADH") against Ries to get that company to stop discharging untreated waste directly to Stoney Creek. [hrs record, mwh Conoco 2005 report] In 1969, PADH filed a number of reports indicating that UCC was disposing of waste directly into Stoney Creek. [hrs record, mwhconoco 2005 report] Such reports of discharges continued throughout UCC's tenure at the Site, as well as into Metro's term

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

of ownership in the 1980s, and resulted in Pennsylvania Department of Environmental Protection ("PADEP") and its predecessors issuing numerous notices of violation ("NOVs") for dumping in Stoney Creek, material flowing and leaking into Stoney Creek, and leaking drums being stored outside on the ground. [hrs record, mwhconoco 2005 report] Since the mid-1980s there have been numerous CERCLA Removal and Site Assessment actions related to the Site including a Preliminary Assessment, three Removal Assessments, two PRP searches, two EPA-lead Removal Actions, and one PRP-lead Removal Action under and Administrative Order on Consent. [hrs record]

PRP Overview

The potentially responsible parties ("PRPs") at the Site include former owners and operators of the Site as well as the companies that generated the waste that was in the drums cleaned at the Site, which led to a release of hazardous substances, and companies who transported drums, and thus waste, to the Site.

**C. Enforcement Actions**

**1. Past State Actions**

The Site has a long history of NOVs being issued to owners/operators of facilities located on the Site. Between the 1960s and the 1980s, both PADH and PADEP cited Ries, UCC, and Metro for numerous violations, most centered around discharging waste into Stoney Creek. [hrs record] In June 1965, PADH ordered Ries to cease discharging untreated waste directly into Stoney Creek. [hrs record, mwh Conoco 2005 report] In April 1969, PADH filed a report indicating that UCC had cut a trench into the waste disposal lagoon allowing accumulated "oily waste" to flow directly into Stoney Creek. [hrs record, mwhconoco 2005 report] PADEP issued numerous NOVs to UCC and Metro from the late 1960s through the late 1980s because of deficiencies including oil seeps from the waste disposal lagoon; a "black substance" leaking from the Site to adjacent railroad tracks; improperly stored drums and wastes; drum waste flowing into Stoney Creek via floor drains connected to the storm water system; a "red material" flowing into Stoney Creek; and leaking drums stored outside on the ground. [hrs report, mwhconoco 2005 report]

**2. Federal Actions**

Federal involvement at the Site began in 1987 when EPA performed a site inspection and conducted sampling. [hrs record] This inspection revealed the following: 1) approximately 60,000 drums on the Site; 2) shutdown of the facility's wastewater treatment system resulted in build-up of untreated sludge; 3) the facility property was unfenced and drums containing sludge were in poor condition and many were leaking. [hrs record, OSC removal action] Sampling results showed a variety of contaminants in the sludge including benzene, toluene, chlorinated hydrocarbons, phenols, and lead. None of the characteristics were considered to exhibit a threat to public health so no removal action was warranted. [hrs record, mwh Conoco 2005 report, osc removal]

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

In February 1988, the U.S. Coast Guard requested EPA emergency response assistance to assess the potential threat from a migration from the Metro facility into the Delaware River, which is approximately 0.10 mile downstream from the Site. [hrs record, osc removal] EPA initiated a removal action in September 1988 to secure and stabilize the Site. [hrs record, osc removal] The removal activities included:

- installing a perimeter fence;
- constructing a 300-foot long plywood retaining wall along Stoney Creek to block migration of wastewater, oil, and sludge into the creek; and,
- removing 136,700 gallons of oil-contaminated rain water from a concrete holding tank and sending it offsite for disposal [hrs record, osc removal]

In June 1989 a PRP steering committee signed an Administrative Order on Consent, Docket No. III-89-11-DC ("Removal Consent Order"). Under the Removal Consent Order, the PRP steering committee's contractor conducted the following removal activities:

- Removed and disposed of 6,000 tons of waste, including sludge, tanks, drums, and contaminated soil;
- Decommissioned the concrete holding tank, including removal of liquids and sludge from the holding tank;
- Removal of upper one foot of soil within the secondary containment area and then backfilling that area;
- Scraping of impacted soils to one to one and one-half feet. [hrs record, mwhreport, osc removal]

EPA's involvement with the Site began again in March 2007 when Tetra Tech EM, Inc. ("Tetra Tech") collected 25 surface soil, 24 subsurface soil, 19 ground water, four soil gas, nine surface water, and ten sediment samples as part of a removal assessment of the Site. [hrs record, Tetra tech 2008 report] The results of the tests were compared to EPA Region III's risk-based concentrations ("RBC"). Volatile organic compounds ("VOCs"), SVOCs, poly-chlorinated biphenyls ("PCBs"), pesticides and metals were all detected at concentrations exceeding applicable RBCs. [hrs record, Tetra tech 2008 report] PCB aroclors 1248, 1254, and 1260 were detected at greater than RBC levels in soil samples, including samples that indicated levels up to 15,000, 39,000, and 62,000 µg/k, respectively. [hrs record, Tetra tech 2008 report] Samples from Stoney Creek indicated the presence of the same Aroclors at concentrations exceeding the RBC level. Tetra Tech compared PCB congeners from the sediment samples from Stoney Creek to congeners detected in ground water samples from monitoring wells on the Site and concluded that the PCBs detected in Stoney Creek had migrated from the Metro facility. [hrs record, Tetra tech 2008 report] Based on the results of the 2007 sampling event, Tetra Tech, in August 2008, collected 16 composite and grad sediment samples from tidal mudflats where Stoney Creek empties into the Delaware River. [hrs report, Tetra tech 2008 report] The testing results for these samples indicated that the sediments are contaminated with PAHs and PCBs at levels above benchmarks. Additionally, the PCB congeners in the mudflat sediment samples showed a strong correlation to the congeners collected from the Metro property in 2007 indicating that the PCB contamination likely originated from the Metro property. [hrs report, Tetra tech 2008 report] Further sampling was conducted in June 2010 by Tetra Tech when



*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

they collected five surface soil and three subsurface soil samples from the Metro property and fifteen sediment samples from Stoney Creek and the Delaware River. [hrs record, Weston 2010 report] Analytical results from these samples indicate the presence of PCBs and/or heavy metals in Stoney Creek and Delaware River sediments at elevated concentrations downstream from the Site. [hrs record, Weston 2010]

The Site was proposed for addition to the National Priorities List ("NPL") on September 16, 2011, Federal Register Volume 76, Number 180 (Friday, September 16, 2011). The Site was finalized for listing and formally added to the NPL on March 15, 2012 Federal Register Volume 77, Number 51 (Thursday, March 15, 2012).

### **III. IDENTIFICATION OF POTENTIALLY RESPONSIBLE PARTIES ("PRPs") AND DEFENDANTS**

#### **A. Introduction**

EPA has identified nine (9) PRPs at the Site, pursuant to CERCLA § 107(a), 42 U.S.C. § 9607(a). With the exception of a former owner/operator of the Site, the PRPs identified at the Site are primarily arrangers and/or transporters.

EPA Region III intends to send Special Notice Letters for the RI/FS to the nine PRPs identified herein, collectively referred to herein as "Defendants." [list of PRPs]

There is strong documentary evidence against the Defendants, in the form of Site transaction records and documents provided to EPA in 104(e) responses linking each of the Defendants to the Site.

#### **B. Evidence**

EPA has reviewed evidence connecting nine PRPs to the contamination at the Site. The majority of the Site information was provided through CERCLA 104(e) letters sent to PRPs during the 1988 removal action and in 2012 and 2013 related to the current remedial action to inquire about Site transaction information as well as information about the types of chemicals utilized in their operations and stored and/or shipped in drums. Corporate history searches for each Defendant were conducted through resources such as Lexis, state secretary of state websites, and individual corporate web pages.

**C. Recommended Defendants: PRPs Who Will Be Sent Special Notice Letters for the RI/FS**

**1. Former Owners/Operator:**

- a) **BAYER CROPSCIENCE, LP**  
**(for STAUFFER CHEMICAL COMPANY)**  
**2 T.W. Alexander Drive**  
**P.O. Box 12014**  
**Research Triangle Park, NC 27709**  
**William Buckner, Head of Crop Protection North America**

Legal Contact: George S. Goodridge  
Assistant General Counsel  
Phone: (919) 549-2418  
Fax: (919) 549-2500  
[george.goodridge@bayercropsience.com](mailto:george.goodridge@bayercropsience.com)

State and Date of Incorporation: New York; March 26, 1948 [36]

Assets: Bayer CropScience AG, the parent company of Bayer CropScience, Inc., reported sales of €7.2 billion, and North American sales of €1.7 billion in 2011. [Bayer Cropscience management report]

Basis of Liability

Bayer CropScience, LP ("Bayer CS") is liable pursuant to CERCLA Section 107(a)(1) and (2), 42 U.S.C. § 9607(a)(1) and (2). Bayer CS is the successor to Stauffer Chemical Company ("SCC"), which owned and operated at the Site from 1920 to 1963.

**(1) Nature of Operations**

Bayer CS is the U.S. arm of an international producer of agricultural chemicals. Bayer CS comprises the crop protection division of Bayer CropScience AG.[old 47]

**(2) Corporate History**

Bayer CS is liable as the successor to Stauffer Chemical Company ("SCC") which, as discussed in Section II.B., owned and operated at the Site from 1920 to 1963. Stauffer Chemical Company was incorporated in 1885 in California. [civil lit report SCC siteburtonville(old52), VA 9/30/02, Cal sec of state SCC(old53)] On July 24, 1953, Stauffer Chemical Company (Delaware) was incorporated in the state of Delaware. [civil lit report(old52), Del corp abstratct SBCH(old69)] Stauffer Chemical Company (California) was merged into Stauffer

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

Chemical Company (Delaware) in September 1953 with Stauffer Chemical Company (Delaware) surviving the merger. [civil lit report(old52), cal sec of state(old53), del corp abstract sbch(old69)]

On March 24, 1985, Chesebrough-Ponds, Inc. acquired the stock of Stauffer Chemical Company and operated it as the Stauffer Chemical Division. [old 71] Chesebrough-Ponds was acquired by Unilever Corporation on February 10, 1987. [civil lit report(old52), Ponds, A rich heritage(old72)] Unilever Corporation began negotiations with affiliates of Imperial Chemical Industries, Inc. (Collectively, "the ICI Group") to sell the Stauffer Chemical Company/Stauffer Chemical Division. [imperial to buy stauffer(old54), univler to sell stauffer(old55), stauffer purchase ici(old56)]

In approximately 1986, Stauffer transferred its specialty chemicals business to a subsidiary, Stauffer Specialty & Food Products Company, Inc. [puch agrmt b/t ici and azko(old62), del corp abstract ssfpc(old63)], formed in Delaware in 1986. [del corp abstract ssfpc(old63)] On July 14, 1987, Stauffer Chemical Company, minus its specialty chemicals business (Stauffer Specialty & Food Products Company, Inc.), changed its name to Stauffer Basic Chemical Holdings. [response of Zeneca to 104e10/3/1/96(old64), del corp abstract sbch(old69)]

In July 1987, the ICI Group acquired Stauffer Basic Chemical Holdings, Inc. [Zeneca 1996 104e response WV Ordnance works site(old64)] and its subsidiaries, including Stauffer Specialty & Food Products Company, Inc. [purch agrmt ici an azko(old62), Zeneca 1996 104e response(old64)] The ICI Group immediately divested itself of the specialty chemicals business through a sale of Stauffer Specialty & Food Products Company, Inc., and other related Stauffer subsidiaries (but not Stauffer Basic Chemical Holdings) to Akzo Nobel N.V. and its affiliates in August 1987. [akzo will buy stauffer(old57), imperial to sell stauffer(old58), imperial to sell stauffer units(old59), purch agrmt b/t ici and azko(old62), zenea 1996 104e response(old64)] As part of the sale agreement, Stauffer Specialty & Food Products Company, Inc. was merged into Akzo Nobel Specialties, Inc. [purch agrmt ici and azko(old62), del corp abstract ssfpc(old63)]

In the purchase agreement, dated August 19, 1987, between the ICI Group and Akzo N.V., the ICI Group retained "environmental liabilities to the extent arising from disposal prior to July 31, 1987 of materials by any member of the Stauffer Group (or predecessors) at a site . . ." which was not owned by one of the Stauffer or ICI Group entities being sold to Akzo. [purch agrmt ici and azko(old62)] The purchase agreement further specified that ICI II, a member of the ICI Group, retained environmental liabilities incurred by the Stauffer specialty chemical business. [purch agrmt ici and azko] Akzo therefore did not assume any environmental liabilities incurred by either Stauffer Specialty & Food Products, Inc. or the ICI Group.

On October 1, 1987, the ICI Group sold Stauffer Basic Chemical Holdings, Inc. [old64, old66] to Rhone-Poulenc, Inc. which operated it as the Stauffer Chemical Division of Rhone Poulenc, Inc. [old57, old 58, old 60, old61, old65, old67] Stauffer Basic Chemical Holdings, Inc. ultimately merged into Rhone-Poulenc, Inc. and ceased to exist as a separate entity. [old62, old65]

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

According to the December 2, 1987 agreement between the ICI Group and Rhone-Poulenc, Inc. ("December 1987 Agreement"), the sellers of the basic chemicals business of Stauffer Chemical company (specifically, ICI American Holdings, Inc.) agreed to indemnify the buyer (Rhone-Poulenc, Inc.) for "certain pre-closing off-site liabilities." [old68] A separate company, Stauffer Management Company, LLC ("SMC") was established to assume the indemnification obligations under the December 2, 1987 agreement. [SMC 104e responses, SMC incorporation document(s)]

Rhone-Poulenc, Inc. was incorporated on March 26, 1948, in the State of New York [old67, old70], the American subsidiary of a French company, Rhone-Poulenc SA. [old67] In July 1998, Rhone-Poulenc, Inc. changed its name to Rhone-Poulenc Ag Company, Inc. [old70, old47] In December 1999, Rhone-Poulenc SA and Hoechst AG combined their businesses to form Aventis. [old45] As part of this business combination, Rhone-Poulenc Ag Company, Inc. became Aventis CropScience USA, Inc. ("Aventis CropScience").

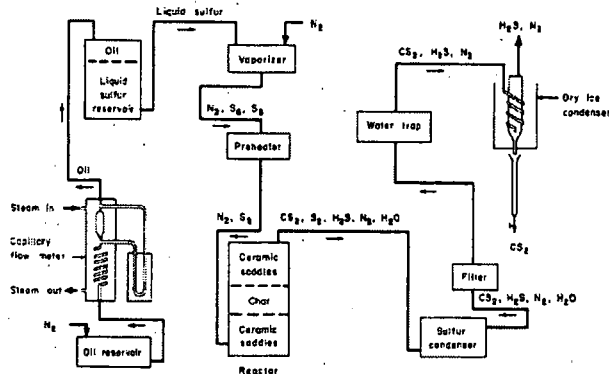
Aventis CropScience was acquired by Bayer AG on June 3, 2002 for €7.25 billion (\$9.173 billion), and began operating on June 4, 2002. [old46, old47] The combined company is named Bayer CropScience AG and maintains its US headquarters in Research Triangle Park, North Carolina. [old43, old46, old47] Bayer CropScience has admitted to being the corporate successor to SCC in its responses to EPA's 104(e) information request letters. [Bayer 104e response 2012] However, Bayer CropScience has indicated that SMC maintains the liability for pre-existing environmental issues based on the indemnification agreement of the December 1987 Agreement. [BCS 104e responses 2012 and 2013, SMC 104e responses 2012 and 2013]

**(a) Nature of Operations**

As stated previously in Section II.B., Stauffer began operating a chemical manufacturing plant at the Site in 1920 and operated there until 1959. [HRS Record, MWH Conoco 2005 Report, 4/18/12 Stauffer Mgt 104e response] Stauffer produced a variety of chemicals at the Site including carbon disulfide, sulfuric acid, and dithiocarbonic anhydride. [HRS Record, MWH Conoco 2005 Report, SMC 104e response] Carbon disulfide is a colorless, flammable liquid prepared from preheated hydrocarbons (natural gas) with vaporized sulfur in the presence of a catalyst, and is one of the contaminants of concern found at the Site. [HRS Record, MWH Conoco 2005 Report] Raw materials used in the manufacturing process included carbon (charcoal or coke) and sulfur. [stauffer mgt 104e response] Carbon disulfide was originally produced by making wood charcoal and sulfur react at very high temperatures; however, by 1958 the use of methane in place of charcoal accounted for 40 percent of production and by 1965 it accounted for 65 percent. [sondreal carbon disulfide article] In either case, and as shown in the diagram on the following page, the carbon disulfide is put through a sulfur condenser and then sent through a filter before being distilled through a condenser from which is emitted carbon disulfide, dihydrogen sulfide, and nitrogen. [sondreal carbon disulfide article] A filter cake is formed when a liquid is passed through a filter. [merriam-webster dictionary] More specifically, filter cake is the residue of impurities that were contained in the liquid and captured on the filter. [merriam-webster dictionary] The filter cake grows in the course of filtration,

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

becomes "thicker" as particulate matter is being retained. It is the solid residue that would have been attached to the filters when the liquid carbon disulfide has been passed through the filter that would have been filter cake and been disposed of by Stauffer in its waste lagoon as indicated in Stauffer Management Company's 2012 response to EPA's 104e information request letter. [stauffer mgt 104e response] Sodium hydrosulfide production was added in 1949. [stauffer mgt 104e response] Production of this chemical included the scrubbing of hydrogen sulfide with caustic soda. [stauffer mgt 104e response]



Stauffer constructed a waste disposal lagoon on the Site sometime between 1953 and 1959 based on analyses of historical maps and aerial photographs of the Site. [HRS Record, MWH Conoco 2005 Report] This waste disposal lagoon was in all likelihood developed from the pond that was located in the same area of the Site property and was adjacent to Stoney Creek, but that has since disappeared. [HRS Record, MWH Conoco 2005 Report] Wastes, including used filter cake from the carbon disulfide manufacturing process, were disposed of in the waste disposal lagoon and possibly into Stoney Creek. [SMC 104e response april 2012]

**(b) Disposal of Hazardous Substances at the Site**

Stauffer's manufacturing process generated waste. The retorts used in carbon disulfide production were ostensibly sent off-site as scrap metal. [stauffer mgt 104e response] Filter cake from the production process, which would have contained carbon disulfide and its constituents that were washed through the filter during the manufacturing process as described previously, was disposed of in the settling pond/disposal lagoon that was located adjacent to Stoney Creek. [stauffer 104e response] As discussed previously, filter cake represents an accumulation of the solid residues left behind when the liquid carbon disulfide was passed through the filter; thus it is reasonable to conclude that some of the carbon disulfide would have been caught in the filter and

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

accumulated in the filter cake. As outlined in Section 2.4.1, page 27 of the HRS Documentation Record, carbon disulfide was found in the former lagoon area at levels significantly above reporting levels during EPA's 2007 sampling event. [HRS Record, 2.4.1, page 27]

Prior Notice

Bayer CropScience, LP received General Notice of its potential liability, as the current successor to Stauffer, by letter dated xxxx, 2012. [Bayer GNL]

2. Defendants: Arranger PRPs

Commented [k5]: Carlyn suggests removing this section??

The basis of liability at this Site for generators as "arrangers" under CERCLA has been established by the Eighth Circuit Court of Appeals in *United States v. Aceto Agric. Corp., et al.*, 872 F. 2d 1373 (8<sup>th</sup> Cir. 1989). In *Aceto*, the Eighth Circuit held that several pesticide manufacturers, who arranged for the formulation of pesticides while retaining ownership of the raw materials and the final product, could be liable as arrangers under CERCLA. *Id.* At 1381-1382.

Commented [k6]: Andy to clean up language in this section?

In *Aceto*, the United States filed a cost recovery action against pesticide manufacturers who arranged with the owner of a pesticide formulation facility to manufacture certain pesticides. The complaint alleged that although the facility performed the actual mixing of the pesticides, the manufacturing defendants owned the technical-grade pesticides, the work in progress, and the final commercial-grade pesticide, and that the generation of pesticide-containing waste is inherent in the process. 699 F. Supp. at 1387. The District Court held that the United States' allegations, if proven, were sufficient to state a claim:

Because the pesticides industry is structured in a unique manner, the liability of pesticide manufacturers must be considered separately. . . . "it is a common practice in the pesticide industry for a manufacturer of a technical grade pesticide to arrange for another company to formulate and package a commercial grade pesticide from a technical grade pesticide and to package the resulting product for the manufacturer." The formulator is more of an independent contractor than a purchaser, because the manufacturer normally maintains ownership of the technical grade pesticide, the work in progress, and the commercial grade pesticide even after possession passes to the formulator. . . . "the generation of wastes containing a pesticide through spills, cleaning of equipment, mixing and grading operations, production of batches that do not meet specifications and other means, is inherent in the formulation process." (internal citations omitted)

699 F. Supp. at 1387.

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

On appeal, the Eighth Circuit agreed with the District Court, that “[a]ny other decision, under the circumstances of this case, would allow defendants to simply ‘close their eyes’ to the method of disposal of their hazardous substances, a result contrary to the policies underlying CERCLA.” 872 F.2d at 1382. See also Morton Int’l, Inc. v. A.E. Staley Mfg. Co., 343 F.3d 669, 677-78 (3<sup>rd</sup> Cir. 2003) (the most important factors in determining arranger liability are: (1) demonstrating ownership or possession of the hazardous substance; and either (2) control over the process that results in a release of hazardous waste, or (3) knowledge that such a release will occur during the process); South Florida Water Mgmt. Dist. v. Montalvo, 84 F.3d 402 (11<sup>th</sup> Cir. 1996) (no bright line rules for defining arranger liability; Court used “totality of the circumstances” approach); United States v. Cello-Foil Products, Inc., 100 F.3d 1227, 1231 (6<sup>th</sup> Cir. 1996) (party’s intent to enter into a transaction that includes an arrangement for disposal can be inferred from the totality of the circumstances); Jones-Hamilton Co. v. Beazer Materials & Services, Inc., 959 F.2d 126 (9<sup>th</sup> Cir. 1992) (party arranged for disposal when it retained ownership of hazardous materials and when its formulation contract contemplated loss of materials arranged for disposal); United States v. Maryland Sand and Gravel and Stone Co., et al., No. HAR-89-2869, 1994 U.S. Dist. LEXIS 14035, at \* 18-21 (D. Md. August 12, 1994) (generators who sent spent solvents to solvent reclamation facility did not arrange for recycling, but for disposal; generators not absolved of CERCLA liability because a third party made the decision to deposit generators’ hazardous by-products at the Site); United States v. Gordon Stafford, Inc., 952 F. Supp. 337, 340 (N.D. W. Va. 1997) (Court adopted totality of the circumstances” approach); and Levin Metals Corp. v. Parr-Richmond Terminals Co., 781 F. Supp. 1448 (N.D. Cal. 1991) (citing Aceto, Court rejects defendant’s argument that DDT released into environment during formulation process was not “waste” because defendant did not dispose of the DDT).

In United States v. Maryland Sand and Gravel and Stone Co., et al., No. HAR-89-2869, 1994 U.S. Dist. LEXIS 14035, at \* 18-21 (D. Md. August 12, 1994), the District Court had to determine whether transactions between certain generator-defendants and the owner/operator were considered recycling or disposal. Id. The generator-defendants had gone to great lengths to characterize their transactions as recycling, but the District Court, quoted Aceto, stating that “courts have not hesitated to look beyond defendants’ characterizations to determine whether a transaction in fact involves an arrangement for the disposal of a hazardous substance.” Id. (citing Aceto, 872 F.2d at 1381). The District Court went on to say that the distinction the generator-defendants tried to make between recycling and disposal was “illusory.” Id. at \*18. The recycling process at the site involved distillation which produces “a residue laden with hazardous substances, which must be disposed of.” Id. The District Court was not concerned with how the generator-defendants characterized the transactions, but whether disposal was inherent in the activity. Id. Here, not only was disposal an inherent part of the activity, but the contracts went a step further than Maryland Sand and provided for some amount of an allowable loss.

Although the Fourth Circuit has not ruled on the validity of the Aceto theory, in Pneumo Abex Corp. v. High Point, Thomasville and Denton Railroad Co., 142 F.3d 769 (4<sup>th</sup> Cir. 1998), it concluded that shipment of spent railroad wheel bearings to be re-smelted did not constitute an arrangement for disposal. Pneumo Abex is distinguishable from Aceto and the instant matter

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

because the central issue addressed there was whether the transaction was for the discard of hazardous substances or for the sale of valuable materials.

The only difference between Aceto and this Site might be the volume of documentation linking each Arranger Defendant to the disposal at the Site. The site involved in Aceto most likely had a large volume of documentation linking each Arranging Company to the disposal of hazardous wastes. Here, EPA is limited in the volume of documentation linking each Arranger Defendant to the Site. That is not to say that EPA does not have such documentation linking the Arranger Defendants to the Site – it does. EPA's evidence includes documents that were provided by the Arranger Defendants.

Special Notice Letters for the RI/FS will only be sent to the following six Arranger Defendants:

E.I. DuPont de Nemours and Company  
Lyondell Chemical Worldwide, Inc.  
Rohm & Haas Company

Tasty Baking Company  
Tunnel Barrel and Drum  
Veolia ES Technologies, L.L.C.

Several of the Arranger Defendants, discussed below, are liable based upon a theory of successor liability. Instead of discussing the legal basis for successor liability for each Arranger Defendant, a full discussion of the legal theory is discussed in subsection XII.C.4, *infra*.



*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

a) **E. I. DU PONT DE NEMOURS AND COMPANY**  
**1007 Market Street**  
**Wilmington, DE 19898**

**Ellen J. Kullman, President**

Legal Contact: None

State and Date of Incorporation: Delaware, September 4, 1915. [Del Corp abstract EI dupont]

Assets: E. I. du Pont de Nemours and Company, Inc. reported net sales of \$37.9 billion and net income of \$3.5 billion for the year ended December 31, 2011. [Dupont 2011 10k]

Basis for Liability

E. I. du Pont de Nemours and Company ("DuPont") is liable pursuant to CERCLA Section 107(a)(3), 42 U.S.C. § 9607(a)(3), as a "person who by contract, agreement, or otherwise arranged for disposal or treatment . . . of hazardous substances . . ." at the Site. DuPont arranged for the disposal of a large number of hazardous substances at the Site. Metro received, rinsed, and refurbished drums from DuPont that contained hazardous substances including waste fuel oil, waste PCB oil from transformers, toluene, nitrobenzene, chromium dioxide, and benzene. [dupont 104e response] All of the aforementioned substances are CERCLA listed hazardous substances, as defined at 40 C.F.R. § 302.4, and PCBs, toluene, benzene, and chromium have been detected at the Site. [hrs record, 2005 conoco] Evidence of such disposal is set forth below in Subsection (3).

**(1) Nature of Operations**

DuPont is one of the largest chemical manufacturers in the United States. [dupont hoovers fact sheet] Its six business segments include coatings, crop protection chemicals and genetically modified seeds, electronic materials, polymers and resins, and safety and security materials and chemicals. [dupont hoovers fact sheet]

**(2) Corporate History**

DuPont was incorporated in Delaware on September 4, 1915. [del corp abstract dupont] DuPont's name and corporate status remain unchanged to date.

(3) Disposal of Hazardous Substances at the Site

DuPont had three contracts with Metro covering its facilities in Towanda, Pennsylvania; Parlin, New Jersey; and the Wilmington, Delaware Experimental Station. [dupont 1988 104e response, dupont 2012 104e response]

Towanda, PA

According to DuPont's May 6, 1988 response to EPA's April 12, 1988 general notice letter, between January 5, 1987 and March 16, 1988 DuPont's Towanda facility sent 10,387 drums to Metro for reconditioning and resale. [dupont 1988 104e response, exhibit A to 2012 104e response] DuPont provided EPA a list of products it produced at the Towanda facility between 1980 and 1988, any of which might have been stored in drums. [8/24/12 dupont response] Per DuPont's August 24, 2012 follow-up response to question 1.b., ingredients in these products included one or more of the following, depending on product:

- Acetone
- Benzene
- Methylene chloride
- Toluene
- 1,1,1-trichloroethane
- Ammonium hydroxide
- Ammonium sulfate
- Cadmium sulfide
- Zinc sulfide
- Polyvinyl chloride resin
- Styrene
- Butadiene
- Methyl ethyl ketone
- Dioxane [dupont 8/24/12 response question 1.b.]

Toluene, 1,1,1-trichloroethane, benzene, cadmium, and zinc are listed as hazardous substances under 40 C.F.R. § 302.4 and were found at the Site. [tetra tech 2008 report, and mwh Conoco2005 report, haz sub location & analysis table]

Prior to using Metro as its drum reconditioner, DuPont's Towanda facility utilized American Cooperage & Steel Drum Co. ("American Cooperage") [Dupont 8/24/2012 104e response 5.c.] DuPont stated in response 5.c. of its August 24, 2012 104e response letter that American Cooperage picked up drums that had contained different chemicals including acetone, n-butyl acetate, isopropanol and methanol. [Dupont 8/24/2012 104e response 5.c.]

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

DuPont has stated that the drums were RCRA-empty<sup>11</sup>, prior to being sent to Metro for reconditioning and resale. [dupon 1988 104e response, exhibit A to 2012 104e response] However, as RCRA empty allows for up to one inch of residue to remain in the drum, this means that some hazardous substances would have been present in the drums sent to Metro and conceivably released during Metro's cleaning process as discussed in Section II, B 1983-1990. Therefore, it is likely that drums sent to the Site by DuPont contained trace or small amounts of toluene, benzene, 1,1,1-trichloroethane, cadmium, and zinc.

Parlin, NJ

The Parlin, NJ facility sent 7,138 drums to Metro between July 1, 1986 and May 6, 1988. [dupon 1988 104e response, exhibit A to 2012 104e response] DuPont has identified paint and lacquer solvents such as ketones, acetates, monomers and acrylic resins as the most likely substances to have been in the drums prior to them being sent to Metro for reconditioning and resale. [dupon 1988 104e response, exhibit A to 2012 104e response] In its supplemental response of August 24, 2012, DuPont more fully identified the hazardous substances used in the manufacturing processes at the Parlin facility, and thus likely contained in the paints, solvents and resins stored in the drums that were sent to Metro. [dupont 8/24/12 response letter] As shown in Parlin Exhibits A, B, and C to DuPont's August 24, 2012 response letter, the hazardous substances utilized include:

- Arsenic
- Benzene
- Toluene
- Trichloroethane
- Ethylbenzene
- Xylene
- Aromatic hydrocarbons
- Petroleum distillates [Parlin exhibit A & B&C of dupont 8/24/12 response]

<sup>11</sup> The regulations in §261.7 define when hazardous waste residue in an empty container is exempt from regulation. These regulations specify the requirements for rendering a container or inner liner "empty." To distinguish between the usual meaning of the word "empty" and the strict regulatory definition, the phrase "RCRA empty" is sometimes used. Any hazardous waste remaining in either a RCRA empty container or inner liner is not subject to regulation under RCRA Subtitle C. EPA promulgated these regulations to advise owners and operators how to empty their containers so that the containers would no longer be subject to regulation, even if some residues remain in the container. Therefore, these regulations allow an owner or operator to reuse containers or inner liners meeting the provisions in §261.7, since the container is no longer considered to hold hazardous waste. A container or an inner liner removed from a container holding nonacute hazardous waste as identified in Part 261, Subpart D, is empty when:

- all wastes have been removed using practices commonly employed industry-wide to remove wastes from containers or liners, such as pouring, pumping, aspirating, and draining (§261.7(b)(1)(i)), and
- no more than 2.5 centimeters (1 inch) of material remains in the container or liner (§261.7(b)(1)(ii)), or
- no more than 3 percent by weight of the container remains for containers with a capacity of 110 gallons or less, and no more than 0.3 percent by weight remains for containers with a capacity greater than 110 gallons (§261.7(b)(1)(iii)).

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

Toluene, benzene, and arsenic have been identified as contaminants of concern at the Site. [hrs package, haz sub location & analysis table]

Furthermore, DuPont's August 24, 2012 response stated that certain hazardous wastes were stored in drums before being sent to various solvent recovery services. [dupont 8/24/12 response letter] DuPont's drum inventory (Parlin Exhibit H) shows that the hazardous substances stored in drums included toluene, benzene, carbon disulfide, and various copper and chromium compounds, among others. [parlin exhibit H to dupont 8/24/12 response letter]

DuPont also provided its "Procedure for the Handling, Decontamination, Storage, and Disposal of Empty Drums." [Exhibit F to 6/8/12 DuPont 104e response] This policy, dated August 26, 1987, was provided in response to EPA's request that DuPont identify all chemicals/constituents that would have been present in drums between 1980 and 1988 at any of the three facilities from which drums were sent to Metro. [DuPont 6/8/12 104e response] The procedure states that empty drums shall be defined as "a drum that has been drained and contains less than 1 inch of material" and that "certain drums require triple rinsing" before being sent to a reconditioner. [Exhibit F to 6/8/12 Dupont 104e response] Materials located at the Parlin facility that were stored in drums requiring triple rinsing prior to the drum being sent for reconditioning included benzene, various lead compounds, and vinylidene chloride, all of which are hazardous substances found on the Metro Property. [Exhibit F to 6.8/12 DuPont response; tetra tech 2008 report; mwh Conoco 2005 report] Therefore it is likely that trace or small amounts of benzene, lead compounds, and vinylidene chloride remained in the drums and were conceivably released during Metro's cleaning process as discussed in Section II, B 1983-1990.

Experimental Station

DuPont's Experimental Station sent drums to Metro beginning in 1983; however, drum numbers were only available for the July 1, 1986 to May 6, 1988 time period when DuPont replied to EPA's April 12, 1988 general notice letter. [dupont 1988 104e response, exhibit A to 2012 104e response] During that shorter time period the Experimental Station sent 7,969 drums to Metro for reconditioning and resale. [dupont 1988 104e response, exhibit A to 2012 104e response]

DuPont has noted in all cases that the drums were RCRA-empty, as previously defined in footnote 1, prior to being sent to Metro for reconditioning and resale. [dupont 1988 104e response, exhibit A to 2012 104e response] However, as RCRA empty allows for up to one inch of residue to remain in the drum, this means that some hazardous substances would have been present in the drums sent to Metro and conceivably released during Metro's cleaning process as discussed in Section II, B 1983-1990.

Prior Notice

DuPont received General Notice of its potential liability by letter dated xxxx, 2012. [dupont GNL] DuPont had also received General Notice of its potential liability related to the

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

1988 removal action via letter dated April 12, 1988. [1988 dupont gnl] DuPont was also party to the June 16, 1989 Administrative Order on Consent, Docket No: III-89-11-DC. [1989 AOC]

**b) LYONDELL CHEMICAL WORLDWIDE, INC.**  
**(f/k/a ARCO CHEMICAL)**  
**3801 West Chester Pike**  
**Newtown Square, PA 19073**

Legal Contact: None

State and Date of Incorporation: April 12, 1966

Assets: LyondellBasell, parent of Lyondell Chemical Worldwide, Inc., reported revenue of \$51 billion and net income of \$2.1 billion in 2011. [LB 2011 annual report]

Basis for Liability

Lyondell Chemical Worldwide, Inc. ("LCW") is liable pursuant to CERCLA Section 107(a)(3), 42 U.S.C. § 9607(a)(3), as a "person who by contract, agreement, or otherwise arranged for disposal or treatment . . . of hazardous substances . . ." at the Site. Lyondell, as successor to Arco Chemical Corporation ("Arco Chemical"), arranged for the disposal of EPA Class D001 and F005 substances at the Site. These classifications include toluene, methyl ethyl ketone, and carbon disulfide. Toluene and carbon disulfide are CERCLA hazardous substances, as defined at 40 C.F.R. § 302.4, and have been detected groundwater and soils, and creek sediments at the Site. [hrs record, mwh Conoco 2005 report, tetra tech 2008 report] Evidence of such disposal is set forth below in Subsection (3).

**(1) Nature of Operations**

LCW, now part of LyondellBasell following the 2007 merger of Lyondell Chemical Company ("Lyondell") and Basell AF, S.C.A. ("Basell"), is one of the world's largest plastics, chemical, and refining companies, and is the world's third largest independent chemical company. [lyondellbasell website] The facility located at 3801 West Chester Pike, Newtown Square, PA, from which drums were sent to the Site, is a research and development facility and does not produce any products. [lyondellbasell 2012 104e response]

**(2) Corporate History**

Arco Chemical Company ("ACC") was incorporated in Delaware on April 12, 1966 and was part of Atlantic Richfield Company ("ARCO"). [lexis Arco chem. Corp filing, Lyondellbasell website] In 1985, Lyondell Chemical Company was formed from selected chemical and refining assets of ARCO; it was spun-off from ARCO as a separate, publicly traded company in 1989. [Lyondell basell website] In 1998, Lyondell Chemical Company acquired

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

ACC and ACC was merged into Lyondell Chemical Worldwide, Inc. [Lyondellbasell website, arco chem. Corporate filing] In 2007, Basell and Lyondell merged to form LyondellBasell Industries ("LyondellBasell"), now the world's third largest independent chemical company. [lyondellbasell website, LB 2011 annual report] LyondellBasell filed for protection under Chapter 11 of the U.S. Bankruptcy Code in 2009 and emerged therefrom on April 30, 2010. [Lyondell website, "Lyondell Leaves Bankruptcy", "Lyondell's Exit from Bankruptcy"] As part of the bankruptcy settlement, LyondellBasell entered into a settlement with U.S. and state environmental regulators (U.S. Bankruptcy Court Southern District of New York, Case No.09-10023(REG)). ["Lyondell to settle with US, state regulators", 4/11/12 104e response, Settlement Agreement Among the Debtors] As part of the Settlement Agreement Among the Debtors, The Environmental Custodial Trust Trustee, The United States, and Certain State Environmental Agencies ("Environmental Settlement") Lyondell Chemical Company set aside funds for environmental liabilities for sites at which the costs could not be determined as of the date of the Environmental Settlement. [Settlement Agreement] The Metro Container Site is included in the list of additional sites in the Environmental Settlement. [SettlementAgreement]

**(3) Disposal of Hazardous Substances at the Site**

ACC's May 10, 1988 response to EPA April 12, 1988 general notice letter indicates that the company sent at least 2,600 unwashed drums to Metro from its Newtown Square research and engineering facility between March 1983 and November 1987. [1988 response, 2012 response] It further notes that the substances that would have been in the drums included hazardous substances that would fall into EPA classification of D001 and F005. [1988 response, 2012 response] Classification F005 includes toluene, methyl ethyl ketone, carbon disulfide, isobutanol, and pyridine. [40CFR302.4] Toluene and carbon disulfide have been identified as contaminants of concern at the Site and were found in the soils and groundwater on the Metro property as well as in the sediments of Stoney Creek [hrs record, mwh Conoco 2005 report, tetra tech 2008 report] ACC estimated that each drum sent to the Site contained no more than one-quarter of a pint of residue, meaning that they sent approximately 80 gallons of waste to the Site in the 2,600 drums sent. [1988 response, 2012 response]

Prior Notice

LCW received General Notice of its potential liability by letter dated xxxx, 2012. [LCW GNL]

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

**c) ROHM AND HAAS COMPANY**  
**100 Independence Mall West**  
**Philadelphia, PA 19106**

Legal Contact: None

State and Date of Incorporation: Delaware, May 14, 1917

Assets: The Dow Chemical Company ("Dow"), of which Rohm and Haas is a subsidiary, had sales of \$60 billion and net income of \$2.4 billion in 2011. While Dow does not break out Rohm and Haas Company's financial results, in 2009 Rohm and Haas had revenue of \$5.6 billion and a net loss of \$134 million. [dow 2011 annual report]

Basis for Liability

Rohm and Haas Company ("Rohm and Haas"), is liable pursuant to CERCLA Section 107(a)(3), 42 U.S.C. § 9607(a)(3), as a "person who by contract, agreement, or otherwise arranged for disposal or treatment . . . of hazardous substances . . ." at the Site. Rohm and Haas arranged for the disposal of various paints, pesticides, lacquers, varnishes, and solvents at the Site, the constituents of which included hazardous substances found at the Site. Evidence of such disposal is set forth below in Subsection (3).

Rohm and Haas is liable as an arranger because it contracted with drum companies such as Sukonik Drum and Tunnel Barrel and Drum to dispose of and/or recondition used drums containing hazardous substances, including cadmium, chromium, copper, selenium, zinc, PCE., TCE, carbontetrachloride, toluene, vinyl chloride, chlorobenzene, carbon disulfide, naphthalene, and isophorone which substances have been found in the soils and/or groundwater at the Site. [R&H 2013 104e response, mwh Conoco 2005 report, tetra tech 2008 report]

(1) Nature of Operations

Rohm and Haas is a manufacturer of specialty chemicals and paints. [History of r&h funding universe] Staple products include polymers and acrylics, while other products include agricultural chemicals, biocides, and resins. [history of r&h funding universe] In the mid-1980s, the polymers, resins, and monomers ("PRM") division of Rohm and Haas accounted for 37 percent of sales and 60 percent of profit and was Rohm and Haas's largest group. [r&h 1987 annual report] Industrial coatings, including solvent-based paints, was one component of PRM. [r&h 1987]

(2) Corporate History

Rohm and Haas was incorporated in Delaware on May 14, 1917. [rohrm and haas company corp filing] Rohm and Haas is a wholly owned subsidiary of The Dow Chemical Company. [dow 2011 annual report] Dow acquired Rohm and Haas on April 1, 2009 when Rohm and Haas was merged into a Dow subsidiary, Ramses Acquisition Corp, with Rohm and Haas continuing as the surviving entity. [dow 2011 annual report]

(3) Disposal of Hazardous Substances at the Site

While Rohm and Haas did not directly do business with Metro, thousands of its drums ended up at the Site due to Rohm and Haas's dealings with Sukonik Barrel and Drum Company ("Sukonik") and Tunnel Barrel and Drum Company ("Tunnel") which sent Rohm and Haas drums to the Site. [R&H May 2012 104e response, Tunnel April 2012 104e response] Tunnel, in its April 23, 2012 response to EPA's March 9, 2012 information request letter indicated that it transported drums from Rohm and Haas's facilities in Bristol, Pennsylvania and Bridesburg, Pennsylvania to Metro in the late 1980s. [Tunnel april 2012 104e response] Tunnel has indicated that it was Rohm and Haas that directed Tunnel to deliver the drums to Metro. [tunnel april 2012 104e response] Shipping orders between Rohm and Haas and Tunnel indicate that the drums picked up by Tunnel for delivery to the Site had contained pesticides, paints, lacquers, varnishes, gums, resins, or plastic solvents prior to being sent to the Site. [shipping order dated 2/29/1988] EPA inquired of Rohm and Haas regarding the substances used in the pesticides, paints, lacquers, varnishes, etc. produced by Rohm and Haas. In its February 22, 2013 response to EPA's January 4, 2013 supplemental 104e information request letter, Rohm and Haas indicated that cadmium, chromium, copper, selenium, zinc, PCE, TCE, carbontetrachloride, toluene, vinyl chloride, chlorobenzene, carbon disulfide, naphthalene, and isophorone were all raw materials used in the production of paints, pesticides, and other Rohm and Haas products. [R&H 2013104e response Volume VII] Furthermore, research into paint production in the 1980s reveals that solvents, including toluene, xylene, methylene chloride, methyl ethyl ketone, and methyl isobutyl ketone, were standard ingredients in paints that provided paint with a consistency needed for even application. [NIOSH Manufacture of Paint...] In 1985 alone the U.S. paint industry consumed 277 tons of toluene, 211 tons of xylene, and 89 tons of acetone, in addition to other solvents. [production and use of paint products monograph]



*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

Based on the information provided by Rohm and Haas and research into the typical constituents of paint during the time Rohm and Haas was sending drums to Metro, it is likely that the drums shipped to Metro contained residual amounts of the hazardous substances used by Rohm and Haas in producing the pesticides, paints, lacquers, and varnishes that were stored in the drums prior to being sent to Metro for reconditioning and/or disposal. [tunnel april 2012 104e response] Toluene, xylene, methylene chloride, as well as pesticides, are hazardous substances and were found in the soils and/or groundwater at the Site. [mwh Conoco 2005 report, tetra tech 2008 report]

Prior Notice

Rohm and Haas received General Notice of potential liability by letter dated xxxx, 2012.  
[RH GNL]

**d) TASTY BAKING COMPANY**  
**Navy Yard Corporate Center**  
**Three Crescent Drive**  
**Suite 200**  
**Philadelphia, PA 19112**

Legal Contact: None

State and Date of Incorporation: Pennsylvania, February 25, 1914 [tasty baking company corporate filing]

Assets: Total sales were \$288.6 million with a net loss of \$45.2 million in 2010. [tasty baking 2010 10-k]

Basis for Liability

Tasty Baking Company ("Tasty"), is liable pursuant to CERCLA Section 107(a)(3), 42 U.S.C. § 9607(a)(3), as a "person who by contract, agreement, or otherwise arranged for disposal or treatment . . . of hazardous substances . . ." at the Site. Tasty arranged for the disposal of trichloroethylene ("TCE") at the Site. Evidence of such disposal is set forth below in Subsection (3).

Tasty is liable as drums that it sent to the Site for reconditioning contained residues of 1,1,1-trichloroethane and trichloroethylene. Both are CERCLA hazardous substances, as defined at 40 C.F.R. § 302.4, and TCE has been detected at the Site. [tetra tech 2008 report, haz sub location & analysis table]

**(1) Nature of Operations**

Tasty manufactures, co-packages and sells a variety of premium single portion cakes, pies, donuts, snack bars, pretzels, and brownies under the well-established trademark, TASTYKAKE®. These products include approximately 195 varieties. The best known products with the widest sales acceptance are sponge cakes marketed under the trademarks JUNIORS® and KRIMPETS®, and chocolate enrobed cakes under KANDY KAKES®. The Company also produces a line of sugar-free single portion cakes and snack bars under the name TASTYKAKE Sensables®. [tasty baking 2010 10-k]

**(2) Corporate History**

Tasty was incorporated in Pennsylvania in 1914 and maintains its principal offices and manufacturing facilities in Philadelphia, Pennsylvania. [tasty baking 2010 10-k, tasty baking corporate filing] On April 10, 2011, Tasty Baking Company entered into an Agreement and Plan of Merger (the "Merger Agreement") with Flowers Foods, Inc., a Georgia corporation ("Flowers"), and Flowers Bakeries, LLC, a Georgia limited liability company and wholly-owned subsidiary of Flowers (and its permitted assignee) ("Merger Sub"). Pursuant to the terms of the Merger Agreement, a tender offer (the "Offer") was made to acquire all of the outstanding shares of common stock of the Company ("Common Stock") at a purchase price of \$4.00 per share, net to the holder in cash, without any interest and subject to any withholding taxes. [tasty baking 2010 10-k] The transaction was completed in May 2011. [flowers foods 2011 10-k]

**(3) Disposal of Hazardous Substances at the Site**

Tasty sent drums to the Site between 1986 and 1988. [tasty 2012 104e response, tasty 1988 104e response] The drums were sent for reconditioning and resale if usable and disposal if not usable. [tasty 1988 104e response, tasty 2012 104e response] Tasty Baking received a number of different products in 55-gallon drums including food ingredients, detergents/sanitizers, food-grade lubricants, non-food grade lubricants, package adhesives, and water treatment chemicals. [tasty 1988 104e response, tasty 2012 104e response] Tasty Baking also stored detergents and lubricants (for machinery) in drums. [tasty 2012 104e response, tasty 1988 104e response] Tasty Baking estimated that ¼ inch of residue of non-food grade lubricants and packaging adhesives would be left in drums that had contained those substances. [tasty 1988 104e response, tasty 2012 104e response] The non-food grade lubricants included hazardous substances 1,1,1-trichloroethane and trichloroethylene. [tasty 2012 104e response] Residues of these substances were in some of the drums sent to Metro, including 0.6 gallons of TCE and 0.4 gallons of 1,1,1-trichloroethane according to schedule B.2 of Tasty Baking's June 29, 2012 response to EPA's March 12, 2012 information request letter. [tasty 1988 104e response, tasty 2012 104e response 1 (schedule B.2 page 26 of 43)] Thus, it is more than likely that the drums sent to Metro contained small amounts of the hazardous substances contained therein which ended up being released at the Site during Metro's reconditioning process. TCE has been detected at the Site in the groundwater and soils on the Metro

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

property.[mwh Conoco 2005 report, tetra tech 2008 report, haz sub location & analysis table]

Prior Notice

Tasty received General Notice of its potential liability by letter dated xxxx, 2012. [Tasty GNL]

e) **Tunnel Barrel and Drum Co., Inc.**  
**85 Triangle Boulevard**  
**Carlstadt, NJ 07072**

Legal Contact: Thomas Spiesman  
Porzio Bromberg & Newman P.C.  
100 Southgate Parkway  
PO Box 1997  
Morristown, NJ 07962-1997

(973) 889-4208  
tspiesman@pbnlaw.com

State and Date of Incorporation: New Jersey, December 1961[tunnel barrel div of revenue entity status]

Assets: Unknown

Basis for Liability

Tunnel Barrel and Drum Co., Inc. ("Tunnel") is liable pursuant to CERCLA Section 107(a)(3), 42 U.S.C. § 9607(a)(3), as a "person who by contract, agreement, or otherwise arranged for disposal or treatment . . . of hazardous substances . . ." at the Site. Tunnel arranged for the disposal of numerous hazardous substances at the Site including cadmium, chromium, copper, selenium, zinc, PCE, TCE, carbontetrachloride, toluene, vinyl chloride, chlorobenzene, carbon disulfide, naphthalene, and isophorone which were used in products that were stored in drums picked-up from Rohm and Haas.[r&h 2013 104e response, tunnel 2012 104e response] Evidence of such disposal is set forth below in Subsection (3).

**(1) Nature of Operations**

Tunnel is in the business of drum cleaning and recycling. [tunnel 2012 104e response] It's main facility is located at 85 Triangle Boulevard, Carlstadt, New Jersey.[tunnel 2012 104e response] Tunnel also transports drums for customers to other drum reconditioners.[tunnel

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

**2012 104e response]** In the 1980s, Tunnel transported drums from Rohm and Haas's Bristol and Bridesburg, Pennsylvania facilities to Metro. **[Tunnel 2012 104e response]**

**(2) Corporate History**

Tunnel was incorporated in December 1961. **[NJ Div of Rev. business entity search]** It has only operated under that name and is still in operation today.

**(3) Disposal of Hazardous Substances at the Site**

In the late 1980s, Tunnel transported drums from Rohm and Haas facilities to the Site for reconditioning and/or disposal. **[tunnel 2012 104e response, RH 2012 104e response]** Tunnel has indicated that it was Rohm and Haas that directed Tunnel to deliver the drums to Metro. **[tunnel april 2012 104e response]** Shipping orders between Rohm and Haas and Tunnel indicate that the drums picked up by Tunnel for delivery to the Site had contained pesticides, paints, lacquers, varnishes, gums, resins, or plastic solvents prior to being sent to the Site. **[shipping order dated 2/29/1988]** These products would have contained one or more of the following hazardous substances according to Rohm and Haas: cadmium, chromium, copper, selenium, zinc, PCE, TCE, carbontetrachloride, toluene, vinyl chloride, chlorobenzene, carbon disulfide, naphthalene, and isophorone. **[r&h 2013 104e response]** Tunnel indicates in its response that, per its policy, drums were to be empty by regulation, which allows for residues of up to one inch to remain in drums and be classified as "empty". **[tunnel april 2012 104e response]** Therefore, it is likely that though the drums were RCRA-empty they still contained small amounts of the hazardous substances formerly stored within them and that these hazardous substances were released onto the Site during the reconditioning and/or disposal process.

**Commented [k7]:** There are many more than this one; should they all be exhibits or is one enough as representative?

Prior Notice

Tunnel received General Notice of its potential liability by letter dated xxxx, 2012. **[Tunnel GNL]**

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

f) **VEOLIA ES TECHNICAL SOLUTIONS L.L.C**  
(successor to **MARISOL, INC.**)  
213 W. Union Ave.  
Bound Brook, NJ 08805

**Greig R. Siedor, Chief Legal Officer**  
(413) 229-2924

Legal Contact: None

State and Date of Incorporation: Delaware, January 26, 2000 [VESTS lexis corporate filing]

Assets: Unknown

Basis for Liability

Veolia ES Technical Solutions L.L.C. ("Veolia ES") is liable, as the successor to Marisol, Inc. ("Marisol") pursuant to CERCLA Section 107(a)(3), 42 U.S.C. § 9607(a)(3), as a "person who by contract, agreement, or otherwise arranged for disposal or treatment . . . of hazardous substances . . ." at the Site. Veolia ES, as successor to Marisol, arranged for the disposal of tetrachloroethylene, trichloroethylene, toluene, acetone, methylene chloride, and PCBs at less than 50ppm at the Site. Veolia ES, as successor to Marisol, is liable as Marisol contracted with Metro to clean and recondition drums that contained residues of tetrachloroethylene, trichloroethylene, toluene, acetone, methylene chloride, and PCBs. [Veolia 2012 104e response, sample 1985 waste total] Toluene, TCE, PCE, and PCBs have been detected at the Site are CERCLA hazardous substances, as defined at 40 C.F.R. § 302.4 [hrs record, mwh Conoco 2005 report, tetra tech 2008 report, 2013 Haz Sub location analysis] Evidence of such disposal is set forth below in Subsection (3).

**(1) Nature of Operations**

Veolia ES provides hazardous and regulated waste disposal services. [VES acquires Marisol] It owns and operates a nationwide network of facilities providing thermal destruction, fuels blending, solvent recovery, electronic recycling and technical services. [ibid] Marisol started as a fuels blending and solvent recovery company that expanded into the handling of other hazardous waste. [ibid, www.marisolinc.com]

**(2) Corporate History**

Marisol was founded in 1962. [www.marisolinc.com] On May 8, 2007, Marisol was acquired by Veolia ES. [VES acquires marisol]

**(3) Disposal of Hazardous Substances at the Site**

Marisol operated a RCRA-permitted hazardous waste storage and reclamation facility in Middlesex, New Jersey that received used contaminated solvents in bulk and in containers. **[Veolia 2012 104e response]** Used contaminated products sent to Marisol included thinners, brake fluid, tetrachloroethylene, trichloroethylene, toluene, acetone, methylene chloride, and chloroform, as well as PCBs. **[Veolia 2012 104e response, sample 1985 annual waste total]** Marisol received drums that were used by customers to ship the above referenced wastes to its facility. Marisol shipped these drums to reconditioners, including Metro, once they were RCRA-empty (see previous citation for definition). **[Veolia 2012 104e response]** Shipments of drums to Metro began March 18, 1985 and continued until August 17, 1987. **[Veolia 2012 104e response, shipping document to Metro]** Veolia ES, in its 2012 response to EPA's 104(e) information request letter, stated that drums shipped to reconditioners, including Metro, likely contained very small, unknown quantities of the substances that it received in drums from its customers. **[Veolia 2012 104e response (question 10 & question 1b)]** Specifically, Veolia ES's response listed tetrachloroethylene, trichloroethylene, toluene, acetone, methylene chloride, and chloroform as substances that had been stored in drums and residuals of which would have been in the drums sent to Metro for reconditioning or disposal. **[Veolia 2012 104e response(question 10 & question 1b)]** Therefore, it is likely that the drums Veolia ES sent to the Site contained small amounts, up to one inch per drum per RCRA-empty standard, of the hazardous substances (toluene, TCE, PCE, and PCBs), which were then released onto the Metro Property during the drum reconditioning process. Toluene, TCE, PCE, and PCBs have been detected in the groundwater and/or soils on the Metro Property, as well as in sediments of Stoney Creek. **[mwh Conoco 2005 report, tetra tech 2008 report, haz sub location table]**

Prior Notice

Veolia received General Notice of its potential liability by letter dated xxxx, 2012. **[Veolia GNL]**

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

**D. Parties Considered But Not Recommended**

EPA considered a number of other parties as possible defendants that are not recommended at this time. In almost all cases, the PRPs sent drums to the Metro Property for reconditioning; however, the evidence currently available does not prove conclusively that they contributed to the contamination at the Site. If new or further evidence against any of these parties were to come to light, EPA would reconsider its decision not to issue a special notice letter to those parties.

**1. Current Operator**

**Service Painting, Inc.  
200 Price St.  
Trainer, PA 19061**

**Nikitas Garavelas, President**

Legal Contact: David F. Michelman  
Michelman & Bricker, P.C.  
2207 Chestnut Street  
Philadelphia, PA 19103  
(215) 557-9440  
dmichelman@michelmanbricker.com

Mara Cohen Jackel  
Michelman & Bricker, P.C.  
2207 Chestnut Street  
Philadelphia, PA 19103  
(215) 557-9440

State and Date of Incorporation: Pennsylvania, November 29, 1993 [PAdept ofstatebusinessentity filing, Lexis, PA SOS Corporate Filing, trainer ind. 104e response, SPI Articles of Inc.]

Assets: Unknown

Basis of Non-Liability:

SPI is not liable, under Sections 107(a) (2) of CERCLA, 42 U.S.C. §§ 9607(a) (2), as the operator of the Site. [trainer 104e] SPI leases the Metro Property from Trainer Industries, LLC ("TI"), a related party. TI has a signed covenant not to sue/prospective purchaser agreement with EPA and is not considered a defendant at this Site. [covenant not to sue] SPI is considered to be covered by the TI covenant not to sue as it is an affiliate of TI.

**(a) Nature of Operations**

Service Painting, Inc. ("SPI") provides industrial painting services primarily to the refining and petrochemical industries. [trainer104e] From 2002 to 2008, SPI maintained only an office at the Site; however, beginning in 2008, SPI began performing about ten percent of its painting services at the Site. [trainer104e response] Customers bring their pipes to the SPI facility where SPI sandblasts and paints them before they are installed and used at the customer's facility. [trainer104e response] SPI unloads the pipes and stores them outside prior to sandblasting them, which occurs inside the former drum reconditioning building. Once the sandblasting and painting are complete, the pipes are returned to the yard until they are loaded onto customers' trucks for use at their facilities.

**(b) Corporate History**

SPI was incorporated in Pennsylvania on November 29, 1983. [PAdept ofstatebusinessentity filing, Lexis, PA SOS Corporate Filing, trainer ind. 104e response, SPI Articles of Inc.] SPI's president is Nikitas Garavelas and he has served in this role since incorporation.

**(c) Ownership and Operation of the Site**

SPI's operations are broken into two phases: sandblasting and painting. Sandblasting is the first step in the painting process. Between 2008 and late 2011, sandblasting occurred outside on the Site property. [trainer 104e response] Beginning in 2012, sandblasting, as well as painting, was moved inside the warehouse building. When sandblasting was conducted outdoors, it occurred near the former waste/sludge lagoon. SPI placed bales of hay around the lagoon and between the sandblasting area and the lagoon to keep material from getting into the lagoon. [trainer 104e response] Sandblasting removes part of the metal surface from the new pipes making a more adhesive surface for the paint. [trainer 104e response] The waste sand generated from the sandblasting process is sent for disposal every few years as not much is generated by each job. Before being sent to a disposal facility, the waste sand is tested by an environmental consulting firm to determine its components and the proper disposal method. Typically the waste sand contains trace amounts of cadmium, barium, and lead. [trainer 104e response]

After sandblasting, SPI paints the pipes using epoxy paint that is mixed with thinners prior to application. [trainer 104e response] The paint is purchased in 5-gallon buckets, which are stored in a separate room in the warehouse that has a concrete floor. [trainer104e response] Like sandblasting, painting is now conducted in the former warehouse building on the Site. When painting was done outside, SPI used hay bales to prevent runoff to Stoney Creek and used polyethylene sheeting underneath the pipes to prevent contact between the paint and the ground. [trainer 104e response] New sheeting is used for each job. Paint is applied by both spraying and rolling/brushing. [trainer 104e response] The painting process generates paint and solvent(thinner) waste. [trainer104e response] Waste paint is stored in 55-gallon drums until it is sent for disposal by Veolia Environmental Services. [trainer 104e response] The used plastic



*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

sheeting as well as cheesecloth used to strain paint before use are disposed of in a regular trash dumpster as non-hazardous waste. [trainer 104e response] No spills of greater than 5-gallons, the PADEP reporting threshold, have occurred at the Site while SPI has operated there.[trainer 104e response]

**2. Arrangers/Transporters**

- a) BAKER PETROLITE CORPORATION  
(FORMERLY PETROLITE CORPORATION)  
2929 Allen Parkway  
Suite 2100  
Houston, TX 77019**

Legal Contact: None

State and Date of Incorporation: November 14, 1997

Assets: Unknown; however, Baker Hughes Incorporated, of which Baker Petrolite Corporation is a division, reported revenue of \$19.8 billion and net income of \$1.7 billion in 2011. [bh 2011 annual report]

Basis for Non-Liability

Baker Petrolite Corporation ("Petrolite") is liable pursuant to CERCLA Section 107(a)(3), 42 U.S.C. § 9607(a)(3), as a "person who by contract, agreement, or otherwise arranged for disposal or treatment . . . of hazardous substances . . ." at the Site. Petrolite is the successor to Petrolite Corporation, which arranged for the disposal of drums at the Site, which led to the disposal or treatment of specialized chemicals for use in oil and gas production and transportation industries at the Site. Evidence of disposal is set forth below in Subsection (3). While it is possible that the chemicals contained in the drums either were or contained hazardous substances, no evidence of such has been found. Therefore, Petrolite is not currently considered to be a PRP at the Site; however, if further evidence that the chemicals contained in the drums sent to Metro were or contained hazardous substances found at the Site, this could change.

**(1) Nature of Operations**

Petrolite is a manufacturer of highly specialized chemicals used in oil and gas production and transportation, as well as for cooling water and treating wastewater. [1988 petrolite 104e response, baker 2012 104e response] All of the Petrolite drums sent to the Site came from Petrolite's Eddystone, Pennsylvania facility, which did not produce any products but rather stored specialty chemical products produced elsewhere by Petrolite. [baker 2012 104e response] . Petrolite began operating at the Eddystone facility in 1982. [baker 2012 104e response]

(2) Corporate History

Petrolite Corporation, Ltd. ("Old Petrolite") was founded in 1930 and incorporated in Delaware on February 26, 1945. [Petrolite Corporate history, lexis PA sec state corporate filing old petrolite] Old Petrolite was merged into the specialty chemicals division of Baker Hughes Incorporated, which division was renamed Baker Petrolite. [funding universe BH history] Baker Petrolite Corporation, a division of Baker Hughes, on November 14, 1997. [lexis PA sec of state corp filing baker petrolite]

(3) Disposal of Hazardous Substances at the Site

Between 1984 and 1985, Petrolite sent at least 3,356 drums to the Site for disposal and/or reconditioning. [baker 2012 104e response] All of the drums came from the company's Eddystone facility, which stored chemicals used in the oil and gas and water treatment industries. No specific information is available on the specific chemicals that were stored at the time or that may have been in the drums sent to the Site. Therefore, at this time there is no evidence that the substances stored in the drums that were sent to the Site either were or contained hazardous substances identified in the groundwater, soils, or sediments at the Site and so Petrolite is currently not be pursued as a PRP.

c) ROBERT O'DONNELL  
607 Wynne Road  
Springfield, PA 19064

Robert O'Donnell, President

Legal Contact: None

State and Date of Incorporation: There is no registration of the company on the Pennsylvania Department of State website or on Lexis.

Assets: Robert O'Donnell is a privately held company; therefore its assets are unknown.

Basis of Liability

Robert O'Donnell ("O'Donnell"), could be liable pursuant to CERCLA Section 107(a)(3), 42 U.S.C. § 9607(a)(3), as a "person who by contract, agreement, or otherwise arranged for disposal or treatment . . . of hazardous substances . . ." at the Site. O'Donnell transported drums containing residues of solvents, paint, and oil to the Site for reconditioning. Evidence of such disposal is discussed below in Subsection (3). However, EPA has decided not to pursue O'Donnell has it currently does not have any evidence that the materials previously contained in the drums were or contained hazardous substances found at the Site.

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

**(1) Nature of Operations**

O'Donnell ceased operations in 1999. [notes of conversation with Bob O'donnell]  
When it was in business it was a three person operation with two trucks. [4/23/1988 letter]  
O'Donnell picked up used drums from car washes, soap manufacturers, lube shops and gas stations. [notes of conversation]

**(2) Corporate History**

It is not clear when O'Donnell started in business. There is no record of incorporation on either the Pennsylvania Secretary of State website or on Lexis. Bob O'Donnell, Sr. has indicated that the company closed thirteen years ago. [notes of conversation]

**(3) Disposal of Hazardous Substances at the Site**

O'Donnell sent drums to Metro starting when they opened the facility. [4/23/1988 letter]  
During that time, O'Donnell sent to the Site drums that had contained solvents and oil.  
[4/23/1988 letter] However, EPA has decided not to pursue O'Donnell has it currently does not have any evidence that the materials previously contained in the drums were or contained hazardous substances found at the Site.

**d) UNITED STATES STEEL CORPORATION  
(f/k/a USX CORPORATION)  
600 Grant Street  
Pittsburgh, PA 15230**

**John P. Surman, Chairman and CEO  
Andrew G. Thiros, Attorney - Environmental**

Legal Contacts: None

State and Date of Incorporation: Delaware, January 3, 2002[PA USSC corp filing,  
History of US Steel]

Assets: US Steel had revenue totaling \$19.8 billion and net income of \$265 million in 2011.

Basis for Liability

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

United States Steel Corporation ("US Steel") could be liable pursuant to CERCLA Section 107(a)(3), 42 U.S.C. § 9607(a)(3), as a "person who by contract, agreement, or otherwise arranged for disposal or treatment . . . of hazardous substances . . ." at the Site. US Steel, as successor to USX Corporation ("USX") arranged for the disposal of phenol sulfonic acid, oil, and lubricating oil at the Site. Evidence of such disposal is set forth below in section (3).

US Steel's liability is based upon its disposal of sulfonic acid, which was present as residue in drums sent to Metro for cleaning and reconditioning. Phenol sulfonic acid is a hazardous substance, as defined at 40 C.F.R. § 302.4; however, it has not been detected at the Site. [9, 13] As such, USX is not being pursued as a PRP at the Site. However, should phenol sulfonic acid be detected at the Site during the remedial investigation, EPA could reconsider this decision.

**(1) Nature of Operations**

U. S. Steel is an integrated steel producer of flat-rolled and tubular products with major production operations in North America and Europe. [US Steel 2011 10k] An integrated producer uses iron ore and coke as primary raw materials for steel production. Today US Steel is the largest integrated steel producer headquartered in the United States. [History of US Steel] The Fairless Works facility, from which drums were sent to the Site, was an integrated steel-making operation. [us steel 2012 104e response]

**(2) Corporate History**

The original United States Steel Corporation was founded in 1901 through the combination of Carnegie Steel Company, Federal State Steel Company, American Steel & Wire Co., National Tube Company, American Tin Plate Co., American Steel Hoop Co., and American Sheet Steel Co. [History of US Steel, PA corp entity filing 1] The combined company was called United States Steel Company, which was incorporated in Pennsylvania on August 7, 1905. [PA bus entity filing 1] In 1965, U.S. Steel Company changed its incorporation to Delaware and its name to United States Steel Corporation. [PA bus entity filing 2] In the decades that followed, the company added diversified businesses such as Marathon Oil Company and Texas Oil & Gas Corp. [History of US Steel] This led to a name change to USX Corporation in 1986. [History of US Steel, DE Cert of Name Change] In October 2001, USX's shareholders adopted a plan of reorganization resulting in the spin-off of the steel and steel-related businesses into a separate publicly traded corporation known as United States Steel Corporation. [History of US Steel] The new United States Steel Corporation was incorporated in Delaware on January 3, 2002 and began operating independently as of that date. [PA corp filing, History of US steel]

**(3) Disposal of Hazardous Substances at the Site**

U.S. Steel arranged for the disposal of drums at the Site, which drums formerly contained phenol sulfonic acid fluid, oil, and/or lubricating oil from the company's Fairless Works facility. [US Steel 2012 104e response] A total of 7,325 drums were sent by U.S. Steel to the Site between 1984 and 1988. [us steel 2012 104e response] Phenol sulfonic acid fluid was used by U.S. Steel in the plating bath solution of the electrolytic tinning line at the Fairless Works facility. Oils

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

used in steel manufacturing and maintenance operations were stored in drums which were emptied and sent to Metro for scrap or reconditioning. [us steel 2012 104e response] Scrap drums sent to the Site appear to have burned and crushed according to notations on invoices from Metro to U.S. Steel. [us steel 2012 104e response] Other drums, including plastic drums, were triple rinsed and disposed of, with disposal including shredding of plastic drums according to invoices issued to U.S. Steel by Metro. [ussteel 2012 104e response] Phenol sulfonic acid has not been detected at the Site; as such, USX is not being pursued as a PRP at the Site. However, should phenol sulfonic acid be detected at the Site during the remedial investigation, EPA could reconsider this decision.

**e) WILLIAM H. COOPER AND SONS**  
3200 G Street  
Philadelphia, PA 19123

**John J. Cooper, President**

Legal Contact: None

State and Date of Incorporation: Pennsylvania, December 13, 1965 [Lexis PA corp. filing forWHC]

Assets: Unknown

Basis for Liability

William H. Cooper and Sons ("Cooper") could be liable pursuant to CERCLA Section 107(a)(3), 42 U.S.C. § 9607(a)(3), as a "person who by contract, agreement, or otherwise arranged for disposal or treatment . . . of hazardous substances . . ." at the Site. Cooper arranged for the disposal oil, paints, and solvents at the Site. Evidence of such disposal is set forth below in Subsection (3).

Cooper could be liable as drums that they collected from customers and sent to Metro had residues of new and used oil, paints, and solvents which were discharged at the Site during the reconditioning process. However, no evidence is available regarding hazardous substances contained in the products that were in the drums Cooper sent to the Site; therefore, Cooper cannot be directly linked to contaminants found at the Site.

**(1) Nature of Operations**

Cooper buys and sells drums from and to industrial and commercial customers. [cooper 2012 104e response] Cooper also occasionally reconditions steel drums for customers. [ibid] The company operates from one location at 3900-3912 G. Street, Philadelphia, PA 19124, where it moved in 2006 from 320 Brown Street, Philadelphia, PA 19123.

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

**(2) Corporate History**

Cooper was incorporated in Pennsylvania on December 13, 1965. [Lexis PA corp filing for cooper] There have been no corporate changes since that time.

**(3) Disposal of Hazardous Substances at the Site**

Cooper collected empty, used drums from customers in the chemical, paint, printing, pharmaceutical, oil and solvent industries. [cooper 2012 104e response] While Cooper does not know specifically what was in the drums that it sent to Metro, it believes that the chemicals present in the drums would have been consistent with the chemicals utilized in the industries served by Cooper. [cooper 2012 104e response] Without direct evidence, however, of specific chemicals used and therefore present in the drums and that those chemicals are hazardous substances found at the Site, EPA cannot pursue Cooper as a PRP at the Site. Should more evidence come to light at a later time, EPA could revisit this decision.

**f) ZENITH PRODUCTS  
400 Lukens Drive  
New Castle, DE 19720**

**Joseph Mahon, President**

Legal Contact: None

State and Date of Incorporation: XXXX

Assets: TBD

Basis for Liability

Zenith Products ("Zenith") could be liable at the Metro Container Site, pursuant to CERCLA Section 107(a)(3), 42 U.S.C. § 9607(a)(3), as a "person who by contract, agreement, or otherwise arranged for disposal or treatment . . . of hazardous substances . . ." at the Site. Zenith arranged for the disposal of paint, oil, solvents, and electroplating chemicals at the Site. Evidence of such disposal is set forth below in Subsection (3).

Zenith could liable as it contracted with Metro to clean and refurbish, or dispose of unusable, drums that had contained hazardous substances including paint, oil, solvents, and electroplating chemicals. However, information is not available regarding the composition or type of chemicals used and therefore EPA has been unable to determine if the chemicals that might have been in drums sent to the Site were hazardous substances found at the Site. As such, EPA as decided not to pursue Zenith as a PRP at this time.

**(1) Nature of Operations**

Zenith is a leading manufacturer of bathroom storage and organizational products. [zenith website, zenith 2012 104e response] At the time drums were disposed of at the Site, Zenith operated at 200 Commerce Drive, Aston, Pennsylvania. That location produced metal and plastic bathroom products. [zenith 2012 104e response]

**(2) Corporate History**

Zenith Products Corporation was originally a fictitious name of Zenith Metal Products Corporation. [PA zenith products filing] Zenith Metal Products Corporation was acquired by Zenith Acquisition Corp., a subsidiary of Masco Corporation, on February 28, 1994. [zenith 2012 104e response, zenith acq pa filing] Zenith Acquisition Corp. then changed its name to Zenith Products Corporation and operated as a wholly-owned subsidiary of Masco Corp. [Zenith 2012 104e response, zenith acq pa filing] In 2005, the current owners of Zenith Products Corporation acquired the company's stock from Masco Corp. [zenith 2012 104e response]

**(3) Disposal of Hazardous Substances at the Site**

Zenith, in its April 19, 2012 response to EPA's March 9, 2012 information request letter, provided to EPA Zenith Products Corp.'s April 20, 1988 response to EPA's April 12, 1988 information request letter, as well as information provided in 1993. Zenith sent approximately 600 55-gallon drums to Metro for reconditioning, though some were also crushed and burned. [zenith 1988 104e response] Most of the drums were sent between 1986 and 1988. [zenith 1988 104e response] Prior to being sent to Metro for either reconditioning or crushing/burning, the drums had contained paint, oil, electroplating chemicals and solvents. [zenith 1988 104e response] From notes and copies of correspondence included in the 2012 response, it appears that Zenith approved the removal action PRP group to pay some amount toward the PRP-lead removal costs at the Site, though it is unclear whether this was accepted. [zenith letter to clark, ladner 7/25/88] Information is not available regarding the composition or type of chemicals used and therefore EPA has been unable to determine if the chemicals that might have been in drums sent to the Site were hazardous substances found at the Site. As such, EPA as decided not to pursue Zenith as a PRP at this time.

g) **KESSLER CHEMICAL CORPORATION**  
33 Old Mill Road  
New Hope, PA 18938

**Barry M. Kessler, President**

Legal Contact: None

State and Date of Incorporation: August 23, 1976

Assets: Unknown

Basis for Liability

Kessler Chemical Corporation ("Kessler") could be liable pursuant to CERCLA Section 107(a)(3), 42 U.S.C. § 9607(a)(3), as a "person who by contract, agreement, or otherwise arranged for disposal or treatment . . . of hazardous substances . . ." at the Site. Kessler arranged for the disposal of drums at the Site, which drums last contained aniline. While Aniline is a CERCLA hazardous substance, as defined at 40 C.F.R. § 302.4, it has not been detected at the site. Therefore, EPA has decided not to pursue Kessler as a PRP at this time. If further Site investigations should reveal the existence of Aniline at the Site, EPA would revisit this decision and likely include Kessler as a PRP.

**(1) Nature of Operations**

Kessler is a supplier of specialty, organic intermediates, and solvents. [Kessler website] Kessler is not a manufacturer of chemicals but rather a wholesaler of chemicals. [Kessler 2012 104e response]

**(2) Corporate History**

Kessler was founded in 1973 by Barry M. Kessler, the current company president. [Kessler website] The company was incorporated in Pennsylvania in 1976 and has operated under the same name since inception.

**(3) Disposal of Hazardous Substances at the Site**

It appears that Kessler sent 600 drums to Metro at some point prior to January 13, 1988. A letter of that date from Barry Kessler to Ed Zakrocki, Jr. of EZ Chemical Co., at the time a toll packager for Kessler, states that 600 drums were at Metro and offering to sell those drums to EZ Chemical Co. at \$4.00 per drum on an "as is, where is" basis. [kessler 2012 104e response] In that same letter, Mr. Kessler states that these drums were formerly in Aniline service. [kessler 2012 104e response] The letter further notes that the drums would need further reconditioning in order to be used to package allyl alcohol, which it appears was EZ Chemical Co.'s intended use of the drums. [kessler 2012 104e response] While Aniline is a CERCLA hazardous substance,



*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

as defined at 40 C.F.R. § 302.4, it has not been detected at the site. Therefore, EPA has decided not to pursue Kessler at a PRP at this time. If further Site investigations should reveal the existence of Aniline at the Site, EPA would revisit this decision and likely include Kessler as a PRP.

**h) O.F. ZURN COMPANY**  
**2736 N. Broad Street**  
**Philadelphia, PA 19132**

**John M. Ballinger, Jr., President**

Legal Contact: None

State and Date of Incorporation: New Jersey, September 30, 1933

Assets: O.F. Zurn Company is a privately held company and its assets are unknown.

Basis for Liability

O.F. Zurn Company ("Zurn") could be liable pursuant to CERCLA Section 107(a)(3), 42 U.S.C. § 9607(a)(3), as a "person who by contract, agreement, or otherwise arranged for disposal or treatment . . . of hazardous substances . . ." at the Site. Zurn arranged for the disposal 1,1,1, Trichloroethane at the Site. Evidence of such disposal is set forth in Subsection (3) below.

Zurn is liable as the drums that it sent to Metro for reconditioning contained residue of solvent-based oil additives. One of the solvents used in the additives was 1,1,1, Trichloroethane, which is a CERCLA hazardous substance, as defined at 40 C.F.R. § 302.4, and has been detected at the Site. [hrs record]

**(1) Nature of Operations**

Zurn manufactures petroleum products with a focus on maintenance lubricants, cleaners and degreasers, metal processing fluids, and coolants. [zurn brochure, march28 2012 104e response] Zurn purchases base oils from refiners, blends them with petroleum-based additives as well as solvents, and packages in various size containers for sale to customers. [march 28 2012 104e response]

**(2) Corporate History**

Zurn has been in business since 1883. [zurn brochure] The company was incorporated in New Jersey on September 30, 1933. [zurn lexis corp filing]

**(3) Disposal of Hazardous Substances at the Site**

Zurn sent drums to Metro for reconditioning. While these drums may have been RCRA empty, they may have contained residues of the products sent to Zurn's customers in the drums. [may 2, 1988 104e response; march 28 2012 104e response] Contents of the drums may have included hydraulic oils, cutting oils, gear oils, and metalworking fluids. [2012 104e response] A review of Material Safety Data Sheets ("MSDS") provided by Zurn shows a number of products being up to 100 percent solvents. [Zurn MSDS's] Hazardous substances in the products include 1,1,1-Trichloroethane, a hazardous substance under 40 C.F.R. § 302.4, and which has been detected at the Site [zurn msds, hrs record] Substantially all of the MSDS forms indicate that the product should be kept out of sewers and water courses, yet the reconditioning process used by Metro sent residues from the drums into groundwater and Stoney Creek. [hrs record, mwh report]

**b) NATIONAL RAILROAD PASSENGER CORPORATION  
(AMTRAK)  
60 Massachusetts Ave., N.E.  
Washington, DC 20002**

**Craig M. Caldwell, Environmental Superintendant**

Legal Contact: None

State and Date of Incorporation: Washington, D.C., March 30, 1971

Assets: For the fiscal year ended September 30, 2011, Amtrak reported total revenue of \$2.7 billion and expenses of \$3.9 billion for a net loss of \$1.2 billion. [Amtrak Annual Report fiscal year 2011]

Basis for Liability

National Railroad Passenger Corporation ("Amtrak") is liable pursuant to CERCLA Section 107(a)(3), 42 U.S.C. § 9607(a)(3), as a "person who by contract, agreement, or otherwise arranged for disposal or treatment . . . of hazardous substances . . ." at the Site. Amtrak arranged for the disposal of 230 drums containing PCBs and/or PCB residue at the Site. Evidence of disposal is set forth below in Subsection (3). [1988 104e response, may 15, 2012 104e response, Haz Sub location and analysis table]

**(1) Nature of Operations**

Amtrak provides intercity rail passenger transportation throughout the continental United States. [Amtrak annual report fiscal 2011] It manages a network of long-distance, corridor

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

and high-speed rail service connecting modes of transportation and communities across the United States. [Amtrak annual report fiscal 2011 | In Amtrak's busy northeast corridor (Boston to Washington, D.C.), the company also owns and maintains maintenance and repair facilities for its fleet of 2,258 cars and locomotives. [Amtrak annual report 2011]

**(2) Corporate History**

Amtrak was created by the Rail Passenger Service Act of 1970 when private railroads were exiting the passenger rail business to focus on the more lucrative freight hauling business. [Amtrak annual report 2011] It was incorporated under the District of Columbia Business Corporation Act on March 30, 1971, and began delivering services in May 1971. [lexis dc corp filing, Amtrak annual report fiscal 2011] Amtrak transported over 30 million passengers in its fiscal year ended September 30, 2011, a record level of ridership for the company. [Amtrak annual report 2011]

**(3) Disposal of Hazardous Substances at the Site**

Amtrak sent at least 230 drums to the Site in March 1988. [1988 104e response, may 15, 2012 104e response] The drums were sent from Amtrak's Wilmington Shops located at 4001 Vanderveer Ave., Wilmington, Delaware, which conducts repair and overhaul of locomotives, passenger coaches, and other equipment. [2012 104e response] The drums were used for storage of waste oils and of clean lubricating oils, as well as cleaning solutions, dielectric oils, oily debris and sludges, PCB waste from transformer retro-fills, paint waste, and sand blast waste. [2012 104e response] While no contracts or purchase orders with Metro exist, EPA has a copy of a shipping document for 230 drums sent to the Site on March 24, 1988. [1988 104e response, 2012 104e response] Amtrak maintains that these drums were emptied and crushed prior to being loaded onto Metro's truck and sent to the Site on March 24, 1988. [1988 104e response, 2012 104e response] However, it is likely that the drums still contained hazardous substances that were disposed of at the Site when the drums were sent for disposal.

Prior Notice

Amtrak received General Notice of its potential liability by letter dated xxx, 2012. [Amtrak GNL]

**c) CALLAHAN CHEMICAL COMPANY**  
**806 W. Broad Street**  
**Palmyra, NJ 08065**

**Edmund F. Burke, President**

Legal Contact: None

State and Date of Incorporation: September 27, 1990

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

Assets: Unknown

Basis for Liability

Callahan Chemical Company ("Callahan") is liable pursuant to CERCLA Section 107(a)(3), 42 U.S.C. § 9607(a)(3), as a "person who by contract, agreement, or otherwise arranged for disposal or treatment . . . of hazardous substances . . ." at the Site. Callahan arranged for the disposal of drums with residues of toluene, trichloroethylene, methyl ethyl ketone, and hydrocarbons at the Site. [Callahan 2012 104e response, product list] The chemicals listed above are hazardous substance listed at 40 C.F.R. § 302.4. Toluene, trichloroethylene ("TCE"), and hydrocarbons have been identified as contaminants of concern at the Site. [hrs record, haz substance location & analysis table] Toluene, TCE, and PCE have been found in the soil and groundwater at the Site. [2005 conoco Philips report] Evidence of such disposal is set forth below in Subsection (3).

**(1) Nature of Operations**

Callahan is a wholesale distributor of chemicals; it has no production facilities. [Callahan 2012 104e response, Callahan history website] Callahan has facilities in New Jersey, New England, and Puerto Rico. [history website] The company represents a wide range of chemical suppliers including Citgo, Dow Chemical, Eastman Chemical, LyondellBassell, and P&G Chemical. [Callahan website supplier partners] Callahan's product list is wide-ranging and includes toluene, trichloroethylene ("TCE"), methyl ethyl ketone, and perchloroethylene ("PCE") to name a few. [Callahan product list]

**(2) Corporate History**

Callahan was founded in 1958 by James B. Callahan, Sr. [website] It was incorporated in New Jersey on November 17, 1976. [Florida Sec of State filing Callahan Chemical] Over the years, Callahan expanded its facilities from its original warehouse in Camden, NJ to warehouses in Palmyra and Ridgefield Park, New Jersey, Walpole, MA, and Puerto Rico. [Callahan history website]

### (3) Disposal of Hazardous Substances at the Site

Callahan sent RCRA-empty<sup>2</sup> drums to the Site between 1985 and 1987 from its Palmyra, NJ location. [Callahan 2012 104e response] While Callahan represented in its May 29, 2012 response to EPA's March 9, 2012 information request letter that it does not know what chemicals were in the drums sent to Metro, both currently and in the 1980s, Callahan distributed a full spectrum of chemicals including TCE, PCE, and Toluene, all hazardous substances under 40 C.F.R. § 302.4 and all found on the Metro Property. [Callahan product list, hrs record, 2005 conoco Philips report] Callahan received drums from its customers after they had utilized the product sold to them by Callahan. [Callahan 2012 104e response] Callahan then sent the used drums to Metro for reconditioning. [Callahan 2012 104e response] TCE, PCE, and toluene, were shipped to Callahan's customers in drums that were returned to Callahan and then sent to Metro for reconditioning; all are contaminants of concern at the Site. [Callahan product list, hrs record, 2005 conoco Philips report, haz sub location & analysis table] Because the drums were sent to Metro RCRA-empty, which allows for up to one inch of material to remain in the container, it is likely that drums sent to Metro contained hazardous substances such as TCE, PCE, and Toluene, all of which were found at the Site.

#### Prior Notice

Callahan received general notice of potential liability by letter dated xxxx, 2012.  
[Callahan GNL]

#### E. Defendants' Steering Committee/ Communications

Commented [k8]: This section NOT updated for Metro.

##### 1. Steering Committee

Commented [k9]: Discuss if Metro PRPs form such a committee otherwise delete this section.

The PRP steering committee group for the Site heretofore has been known as the \_\_\_\_\_ ("XXX"). Most of the Defendants are members of the XXX. [ ] The XXX has funded

<sup>2</sup> The regulations in §261.7 define when hazardous waste residue in an empty container is exempt from regulation. These regulations specify the requirements for rendering a container or inner liner "empty." To distinguish between the usual meaning of the word "empty" and the strict regulatory definition, the phrase "RCRA empty" is sometimes used. Any hazardous waste remaining in either a RCRA empty container or inner liner is not subject to regulation under RCRA Subtitle C. EPA promulgated these regulations to advise owners and operators how to empty their containers so that the containers would no longer be subject to regulation, even if some residues remain in the container. Therefore, these regulations allow an owner or operator to reuse containers or inner liners meeting the provisions in §261.7, since the container is no longer considered to hold hazardous waste. A container or an inner liner removed from a container holding nonacute hazardous waste as identified in Part 261, Subpart D, is empty when:

- all wastes have been removed using practices commonly employed industry-wide to remove wastes from containers or liners, such as pouring, pumping, aspirating, and draining (§261.7(b)(1)(i)), and
- no more than 2.5 centimeters (1 inch) of material remains in the container or liner (§261.7(b)(1)(ii)), or
- no more than 3 percent by weight of the container remains for containers with a capacity of 110 gallons or less, and no more than 0.3 percent by weight remains for containers with a capacity greater than 110 gallons (§261.7(b)(1)(iii)).

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

and is continuing to fund the RI/FS and is expected to fund the RD/RA, assuming negotiations are successful.

Liaison Counsel for the XXXX is:

## **2. Communications**

EPA first communicated with the PRPs during the initial investigations into the Site. A total of seven depositions were conducted in 1996 and 1997 pursuant to Fed. R. Civ. P. 27(a) (Case No. CCB-97-2394) in order to preserve the testimony of aging employees of the Site.

EPA issued Special Notice Letters to fifteen (15) PRPs to enter into an AOC to perform the RI/FS at the Site. Eight PRPs agreed to settle with EPA and have been performing the RI/FS since 1997. The PRPs formed the CCSPG and have been working with several of the non-settling PRPs to fund the RI/FS at the Site.

The CCSPG has been very cooperative, funding the work at the Site to date and paying the property taxes at the Site. Liaison counsel for the CCSPG has informed EPA that the group intends to continue to cooperate with EPA during the RD/RA negotiation process.

That being said, liaison counsel for the CCSPG has expressed concern regarding the non-cooperation of one of the largest PRPs at the Site. New Monsanto, acting as "attorney-in-fact" for Pharmacia in this matter, has stated in its March 30, 2007 response to EPA's General Notice Letter that it "is unwilling at this time to participate in negotiations concerning this Site on behalf of Pharmacia." [145] Although there is deposition testimony stating that Old Monsanto contracted with CCC for a four to five year period to formulate DDT on a toll basis (see discussion at III.C.3(m), *supra*) and that Old Monsanto's DDT had to be air milled due to its hardened nature, New Monsanto does not believe that the deposition testimonies are enough to prove that Pharmacia has any liability at the Site. [145, 146]

EPA and liaison counsel have had an open dialogue regarding options for encouraging New Monsanto, as a potential non-cooperating party, to cooperate with the CCSPG, including a discussion regarding issuing a Participate and Cooperate Unilateral Administrative Order should New Monsanto keep its word and not participate in RD/RA negotiations with EPA. However, these discussions are all speculation as no action shall be taken until Special Notice Letters are issued and New Monsanto fails to cooperate as it has said it would.

## **IV. LEGAL DEFENSES**

Commented [k10]: Needs updating

### **A. Defenses Raised by Owner/Operator Stauffer Chemical Company (Bayer CropScience)**

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

There are no known defenses raised by BayerCropscience with respect to liability at the Site. SCC, predecessor to BayerCropscience, was the owner/operator of the Site at the time of disposal of hazardous substances at the Site.

**B. Likely Defenses Raised by Generators**

**1. The Divisibility Defense**

The arranger Defendants could, but are unlikely to, raise what has become known as the Alcan defense, which is based on the holding in United States v. Alcan Aluminum, 964 F.2d 252 (3rd Cir. 1992); accord United States v. Alcan Aluminum, 315 F.3d 179 (2d Cir. 2003). In Alcan, defendant alleged that it was not liable for response costs because the low levels of hazardous substances contained in the material it sent to the site could not have contributed to the release. The Third Circuit reversed the district court's summary judgment decision in favor of the government, holding that defendant should be granted the opportunity to demonstrate that the hazardous substances it sent to the site could not, when added to other hazardous substances at the site, have caused or contributed to the release. Under Alcan, if defendants could prove that they could not have caused or contributed to the release, then they would not be liable for the cost of response. In the alternative, if a defendant could demonstrate that the harm caused by its waste is capable of reasonable apportionment, then it should be held liable only for the response costs relating to that portion of harm to which it contributed. Id. The Alcan opinion makes clear that the burden of proof on this issue is placed on the defendants.

Because the Metro RI/FS will focus on the soils and groundwater at the Site, it is highly unlikely that any PRP will attempt to assert that it could not have caused or contributed to the release. The evidence shows that all of the arranger PRPs sent one or more of the hazardous substances detected in both the soils and groundwater at the Site. Additionally, all of the PRPs knew that they were sending drums with chemical residues in them to be cleaned and refurbished, and it is reasonable to conclude that the PRPs knew that the cleaning process would release those residues.

EPA is aware of two cases currently before the Supreme Court that could have implications on the divisibility defense and whether passive landowners and arrangers may be held jointly and severally liable under CERCLA if there is no evidence that would indicate that apportionment of liability was appropriate. Burlington Northern & Santa Fe Railway Co. v. United States, No. 07-1601; Shell Oil Co. v. United States, No. 07-1607 (hereinafter referred to as the "BNSF case"). Given that the ROD focuses solely on soils, it is unlikely that the outcome of the BNSF case would impact this Site.

Commented [k11]: Discuss with Carlyn and Andy for applicability

**2. Defenses to "Arranger" Liability**

The most plausible defense for the generators is to challenge the application of United States v. Aceto Agricultural Chem. Corp. 699 F. Supp. 1384, aff'd, 872 F.2d 1373 (8th Cir. 1989), since the Fourth Circuit has yet to rule on this issue.

### 3. **Failure to State a Claim**

Commented [k12]: Not sure if applicable to Metro

As stated above, the CCSPG has been cooperating with EPA by conducting the RI/FS at the Site. Liaison counsel for the CCSPG has expressed that the group plans to cooperate in the future; however, one PRP, Monsanto, has stood alone and stated that based upon the evidence, it is not liable and is not willing to cooperate.

In its response to EPA's General Notice Letter, dated March 30, 2007, New Monsanto, acting as "attorney-in-fact" for Pharmacia for this matter, stated that it could not locate any documents indicating that Pharmacia had any business relationship with Central Chemical. Even though there is deposition testimony recollecting large amounts of Old Monsanto's DDT being processed and a loss of close to 50% due to the nature of the product, New Monsanto does not believe that is enough to prove that Pharmacia has any liability at the Site.

New Monsanto has stated in this letter that it "is unwilling at this time to participate in negotiations concerning this Site on behalf of Pharmacia."

That being said, New Monsanto has since entered into an agreement with Solutia to assume liability for certain "Legacy Sites," including Central Chemical. Whether that means that New Monsanto has changed its mind and plans to cooperate remains to be seen. The CCSPG has requested that EPA issue a cooperate and participate order to New Monsanto should it not participate in settlement negotiations for the RD/RA.

### V. **STATUTE OF LIMITATIONS**

Commented [k13]: Update for Metro

EPA is not, at this time, seeking to recover removal, oversight and remedial response costs incurred in connection with the Site. Pursuant to Section 113(g)(2)(A) of CERCLA, 42 U.S.C. § 9613(g)(2)(A), an initial action for recovery of removal costs must be commenced "within three (3) years after completion of the removal action." Pursuant to Section 113(g)(2)(B) of CERCLA, 42 U.S.C. § 9613(g)(2)(B), an initial action for the recovery of remedial costs must be commenced "within six (6) years after initiation of physical on-site construction of the remedial action." However, pursuant to Section 113(g)(2)(B) of CERCLA, 42 U.S.C. § 9613(g)(2)(B), costs incurred in a removal may be recovered in a cost recovery action for remedial costs "if the remedial action is initiated within three (3) years after completion of the removal action."

The term "removal" is defined in Section 101(23) of CERCLA, 42 U.S.C. § 9601(23), as including

the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health



*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

or welfare or to the environment, which may otherwise result from a release or threat of release.”

42 U.S.C. § 9601(23).

Since the removal action at this Site was completed in 1997 and the remedial action would not be commenced within 3 years of the completion of the removal action, EPA discussed with DOJ the possibility of requesting tolling agreements to address issues with the statute of limitations. Marcia Everett, the Senior Assistant Regional Counsel previously assigned to this case, discussed this issue with Nancy Flickinger, Senior Attorney for the DOJ Environmental Enforcement Section in 2000. [224] DOJ recommended not seeking a tolling agreement since the only costs at risk were those costs incurred through June 12, 1997. Those costs related to the removal of the fence on the Site. EPA's costs associated with the removal of the fence were minimal because the PRP performed some of the activities, EPA's oversight was inexpensive, and the other activities were not complex undertakings. In addition to those costs, there were approximately \$300,000 in additional costs associated with the Preliminary Assessment/Site Investigation, PRP Search, Hazardous Ranking System scoring, and other activities.

EPA made a determination to not obtain tolling agreements from the PRPs because some of the PRPs would refuse to sign the tolling agreement, complicating the equities in the enforcement context, and making it more difficult to get extensions of any such agreements signed by others.

## **VI. SUMMARY OF RESPONSE COSTS**

Commented [k14]: Update for Metro

Total EPA past costs for the Site, through August 14, 2007 are \$783,292.48, excluding pre-judgment interest. [225] At this time, EPA's total past costs include those at-risk costs discussed in Section V, *supra*. An updated, certified Cost Summary Report will be prepared by EPA and forwarded to DOJ, after a full quality analysis review of costs has been performed, prior to the issuance of special notice.

EPA expects to collect approximately \$384,662 from the W.R. Grace bankruptcy settlement. The proceeds from the W.R. Grace bankruptcy settlement will be deposited into a site-specific special account to be used to conduct or finance response actions at the Site, or transferred to EPA's Hazardous Substance Superfund, at EPA's discretion.

### **ADMINISTRATIVE RECORD**

## **VII. ADMINISTRATIVE RECORD**

The Administrative Record in support of the RI/FS will be compiled by Christopher Sklaney, RPM, and will be reviewed by Senior Assistant Regional Counsel, Andrew S. Goldman. The Administrative Record will be located at the U.S. EPA Region III Offices, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and online at [www.epa.gov/arweb](http://www.epa.gov/arweb).

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

## **VIII. NATURAL RESOURCE DAMAGE TRUSTEES CONTACT**

EPA has notified the Pennsylvania Department of Environmental Protection in accordance with Section 122(j) of CERCLA, 42 U.S.C. § 9622(j), of EPA's intention to negotiate with responsible parties for privately-financed RI/FS. [letter to PADEP]

## **IX. RELATED CIVIL AND/OR CRIMINAL INVESTIGATIONS**

There are no related civil and/or criminal investigations at this time. A CERCLA § 107 Cost Recovery Referral for past costs may be forwarded to the DOJ at a future date if those costs are not recovered under a negotiated RI/FS Consent Decree.

## **X. PRE-REFERRAL SETTLEMENT STRATEGY**

EPA will issue a CERCLA § 122 Special Notice Letter to each of the Defendants [SNL template], together with a draft Site-specific Consent Decree [CD template] setting forth the United States' terms for performance of the RI/FS.

The statute provides recipients of such letters a period of sixty (60) days to submit a good faith offer to settle. If such an offer is received within the statutory period, the parties are given an additional sixty (60) days to negotiate the consent decree. At this time, EPA has reason to believe that the Defendants will respond positively to an opportunity to settle.

Although liaison counsel for the Metro PRP group has expressed a willingness to cooperate and participate in RI/FS negotiations, liaison counsel has also expressed concern regarding the non-cooperation of one of the largest PRPs at the Site. EPA and liaison counsel have had an open dialogue regarding options for encouraging the non-cooperating party to cooperate with the Metro PRP Group, including a discussion regarding issuing a Participate and Cooperate Unilateral Administrative Order should the non-cooperating party fail to participate in RI/FS negotiations with EPA. However, these discussions are all speculation as no action will be taken until Special Notice Letters are issued and such party fails to cooperate. Should such party fail to cooperate, EPA will evaluate its options with DOJ at that time.

Commented [k15]: Update when know if a PRP group comes together

EPA expects to seek a 100% recovery of unreimbursed past costs in the negotiated RD/RA CD for OU-1; plus future oversight costs. The unreimbursed past cost figure currently is approximately \$783,292.48 as of August 14, 2007. [225] A Special Account exists for the Site, consisting of approximately \$290,000, which EPA has the discretion to use to finance future work or to place it into the Hazardous Substance Superfund, per the terms of the RI/FS Consent Order. EPA does not intend to offer the PRPs any disbursements from the Special Account in the RD/RA CD for OU-1.

Commented [k16]: Section needs updating for Metro when know more

## **XI. LEGAL, POLICY AND STRATEGIC CONSIDERATIONS**

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

**A. Enforcement Activity Contemplated**

EPA intends to issue Special Notice Letters pursuant to Section 122 of CERCLA, 42 U.S.C. § 9622, to the Defendants [1], and to initiate negotiations for a Consent Decree under which the PRPs will:

- (1) Finance and perform the RI/FS; and,
- (2) Reimburse EPA for oversight costs to be incurred at the Site.

The executed Consent Decree will be filed in the United States District Court for the District of XXXXX, together with a complaint seeking relief pursuant to CERCLA §§ 106 and 107, 42 U.S.C. §§ 9606 and 9607. In accordance with CERCLA Section 121(f), 42 U.S.C. § 9621(f), EPA Region III has provided the State of Pennsylvania with notice of, and an opportunity to participate in negotiation for and be party to the Consent Decree. [PA letter] As of this date, the State has not decided whether or not it will participate in negotiations.

If the Defendants do not enter into a Consent Decree, a Unilateral Administrative Order ("UAO") will be issued pursuant to CERCLA § 106(a), 42 U.S.C. § 9606(a). EPA will seek judicial enforcement of the UAO pursuant to CERCLA § 106(b), 42 U.S.C. § 9606(b), if there is non-compliance with the UAO.

**B. Legal Basis for Special Notice Letters**

CERCLA contains language which, when appropriate, establishes a negotiations moratorium during which time the United States may not undertake work that is the subject of the negotiations for a statutorily defined period. The issuance of Special Notice Letters to potentially responsible parties would initiate this negotiations moratorium.

CERCLA § 122(e)(1) and (e)(2)(A), 42 U.S.C. § 9622(e)(1) and (e)(2)(A), provide, in pertinent part:

Whenever the President determines that a period of negotiation under this subsection would facilitate an agreement with potentially responsible parties for taking response action . . . and would expedite remedial action, the President shall so notify such parties.

Except as provided in this subsection, the President may not commence action under Section 104(a) or take any action under Section 106 for 120 days after providing notice and information under this subsection with respect to such action.

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

Use of this Special Notice procedure therefore requires that the President:

- (1) make a determination that "a period of negotiation under this subsection would facilitate an agreement with potentially responsible parties for taking response action . . . and would expedite remedial action;" and,
- (2) identify potentially responsible parties for receipt of Special Notice Letters.

**Evidence and Support**

Authority to engage the Special Notice procedures was delegated from the President to the Administrator of EPA by Executive Order 12580, 52 Fed. Reg. 2923 (January 20, 1987), and further delegated to the Director of the Hazardous Site Cleanup Division by EPA Delegation 14-8-B. Approval of this PRN by the Director of the Hazardous Site Cleanup Division shall constitute a determination that "a period of negotiation under this subsection would facilitate an agreement with potentially responsible parties for taking response action . . . and would expedite remedial action."

**C. Legal Basis for Filing a Complaint Seeking Relief for Past Costs Under CERCLA § 107, 42 U.S.C. § 9607**

Successful prosecution of a liability claim under CERCLA § 107, 42 U.S.C. § 9607, requires proof of the following elements:

- a release or threat of release of hazardous substances into the environment . . .
- from a facility . . .
- which causes the United States to incur response costs . . .
- for which the United States seeks recovery from a party falling into a liability category described in Section 107 of CERCLA.

**1. Release or Threatened Release of Hazardous Substances into the Environment**

A "release" is defined at CERCLA § 101(22), 42 U.S.C. § 9601(22), in pertinent part, as follows:

. . . any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other enclosed receptacles containing any hazardous substance or pollutant or contaminant).

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

A "hazardous substance" is broadly defined at CERCLA § 101(14), 42 U.S.C. § 9601(14), in pertinent part as follows:

(B) any element, compound, mixture, solution or substance designated pursuant to Section 102 of this Act.

Pursuant to CERCLA § 102, 42 U.S.C. § 9602, EPA has published a list of designated hazardous substances. The list is found at 40 C.F.R. Part 302.

The term "environment" is defined at CERCLA § 101(8), 42 U.S.C. § 9601(8), in pertinent part as follows:

The term "environment" means . . . (B) any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States.

**Evidence and Support**

The Site Assessment Investigation performed at the Site demonstrates the release (through, for example, leaking, emitting, discharging, and escaping) of hazardous substances. Hazardous substances found at the Site in soils or groundwater include the following:

- |                      |                |
|----------------------|----------------|
| • Carbon Disulfide   | • Anthracene   |
| • Aroclor-1254       | • Chrysene     |
| • Aroclor-1260       | • Phenanthrene |
| • Cadmium            | • Aroclor-1248 |
| • Lead               | • Chromium     |
| • Benzo(a)pyrene     | • Mercury      |
| • Benzo(a)anthracene | • Zinc         |

[hrs record, TT 2010 trip report, ]. Each of the above are designated hazardous substances pursuant to 40 C.F.R. Part 302. Each of the hazardous substances has been released into the environment (onto the land, surface water and into the groundwater) at the Site, as evidenced by sampling results during the Site Investigation. [hrs record and trip report and mwh report]

**2. From a facility**

"Facility" is defined at CERCLA § 101(9), 42 U.S.C. § 9601(9), in pertinent part as follows:

The term "facility" means . . . (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

**Evidence and Support**

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

The Metro Container Site falls within the definition of "facility" because it is a site or area where hazardous substances, including carbon disulfide, PCBs, mercury, zinc, lead, chromium, and PAHs, have come to be located as evidenced by the soils, surface water and groundwater contamination there. [hrs record, TT reports, MWH report]

### **3. Which Causes the United States to Incur Response Costs**

CERCLA permits the United States to respond to releases of hazardous substances, pollutants, and contaminants into the environment and to sue to recover the costs appropriately incurred in the course of such response activities.

CERCLA §104, 42 U.S.C. § 9604, establishes the legal basis upon which response actions may be conducted and provides, in pertinent part:

Whenever

(A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment.

CERCLA activities may be either "removal" or "remedial" actions. Activities included under the United States' "removal" authority are set forth at CERCLA §101(23), 42 U.S.C. § 9601(23), as follows:

The terms "remove" or "removal" means [sic] the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary taken [sic] in the event of a threat of release of hazardous substances into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of any other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. The terms include, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies,

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

temporary evacuation and housing of threatened individuals not otherwise provided for, action taken under section 104(b) of this Act, and any emergency assistance which may be provided under the Disaster Relief Act of 1974.

CERCLA §104(b), 42 U.S.C. § 9604(b), provides in pertinent part:

Whenever the President is authorized to act . . . or whenever the President has reason to believe that a release has occurred or is about to occur . . . , he may undertake such investigations, monitoring, surveys, testing, and other information gathering as he may deem necessary or appropriate to identify the existence and extent of the release or threat thereof, the source and nature of the hazardous substances, pollutants, or contaminants involved, and the extent of danger to the public health or welfare or to the environment. In addition, the President may undertake such planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations as he may deem necessary or appropriate to plan and direct response actions, to recover the costs thereof, and to enforce the provisions of this Act.

**Evidence and Support**

As of August 14, 2007, EPA incurred \$783,292.48 in response costs as a result of the release and threatened release of hazardous substances into the environment from the Central Chemical Site. A Cost Summary, dated August 14, 2007, outlining these costs is attached. [225]. Costs continue to accrue at the Site. An updated, certified Cost Summary Report will be prepared by EPA and will be forwarded to DOJ prior to the issuance of special notice.

**Commented [k17]:** Need to know EPA costs to date. Also focus on future costs?

**4. For Which the United States Seeks Recovery From a Party Falling into a Liability Category Described in Section 107 of CERCLA**

CERCLA §107(a), 42 U.S.C. § 9607(a), sets forth several categories of persons against whom the United States may recover response costs. That section provides, in pertinent part, as follows:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section --

- (1) the owner and operator of a . . . facility,

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility . . . owned or operated by another party or entity and containing such hazardous substances, and
- (4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, . . . or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for –
  - ...
  - (A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan;
  - (B) any other necessary costs of response incurred by any other person consistent with the national contingency plan.

The term "disposal" is defined at CERCLA § 101(29), 42 U.S.C. § 9601(29), by reference to the definition contained in Section 1004 of the Solid Waste Disposal Act, 42 U.S.C. § 6903, as follows:

The term "disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

**Evidence and Support**

See Section III (Identification of PRPs and Defendants) of this Report for specific liability information for each individual Defendant.



*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

**Former Operators:** The liability of the Stampers as former operators under CERCLA Section 107(a)(2), 42 U.S.C. § 9607(a)(2), has been established by City of Emeryville v. Elementis Pigments, Inc., 2001 WL 964230 (N.D. Cal. March 6, 2001); United States v. Union Gas Co., 1992 WL 277647 (E.D. Pa. Sept. 30, 1992); *see also* Long Beach Unified School Dist. v. Dorothy B. Godwin Living Trust, 32 F.3d 1364, 1370 (9<sup>th</sup> Cir. 1994). See discussions in Sections III.C.2. and IV.B.1., *supra*.

**Generators:** The liability of the generators as arrangers under CERCLA Section 107(a)(3), 42 U.S.C. § 9607(a)(3), has been established by United States v. Aceto Agricultural Chem. Corp. 699 F. Supp. 1384, *aff'd*, 872 F.2d 1373 (8<sup>th</sup> Cir. 1989). See discussion in Section III.C.3., *supra*.

**Successor Entities:** Several Defendants are liable as successors due to mergers with predecessors that would have been liable for releases at the Site. See 1 U.S.C. § 5. See also Anspec Co., Inc. v. Johnson Controls, 922 F.2d 1240, 1246 (1<sup>st</sup> Cir. 1991) (universal rule that "corporation" includes a successor corporation resulting from a merger). In addition, EPA Region III has identified a number of PRPs which may, by the legal definition set forth in U.S. v. Carolina Transformer, 978 F.2d 832, 838 (4<sup>th</sup> Cir. 1992), be successor companies and, therefore, liable under CERCLA § 107(a).

The Fourth Circuit in Carolina Transformer reiterated the "settled rule," or traditional theory that a corporation which acquires the assets of a predecessor corporation does not take the liabilities of the predecessor unless one of the following four "generally recognized exceptions" are met: "1) the successor *expressly or impliedly agrees* to assume the liabilities of the predecessor; 2) the transaction may be considered a de facto merger; 3) the successor may be considered a 'mere continuation' of the predecessor; or 4) the transaction is fraudulent." *Id.* at 838 (emphasis added). The "mere continuation" theory does not apply, however, unless only one corporation remains after the sale. *Id.* at 838.

The second theory, known as the "continuity of enterprise" or "substantial continuation" theory, would consider the following factors in considering a successor's liability: "1) retention of the same employees; 2) retention of the same supervisory personnel; 3) retention of the same production facilities in the same location; 4) production of the same product; 5) retention of the same name; 6) continuity of assets; 7) continuity of general business operations; and 8) whether the successor holds itself out as the continuation of the previous enterprise." *Id.* at 9 (citing Mozingo v. Correct Mfg. Corp., 752 F.2d 168, 175 (5<sup>th</sup> Cir. 1985)). The Fourth Circuit

Although the Third Circuit in U.S. v. General Battery Corp., Inc., 423 F.3d 294 (3<sup>rd</sup> Cir. 2005), held that the substantial continuity theory does not apply, that is not the case in the Fourth Circuit. In General Battery, the United States argued that a de facto merger applied. In arguing before the Third Circuit, the United States explicitly and tactically did not raise an argument regarding the substantial continuity theory. Had the United States done so, it could potentially have been estopped from arguing such a point in the future, even if it was the precedential law in another circuit. Since General Battery was decided in 2005, the Eighth Circuit has held that even in the face of Bestfoods, substantial continuity continues to be a viable doctrine of law. K.C. 1986 L.P. v. Reade Mfg., 472 F.3d 1009, 1022 (8<sup>th</sup> Cir. 2007) ("Bestfoods does not directly

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

address corporate successor liability, and consequently, there may yet be contexts in which the substantial continuity test could survive.”) In the Fourth Circuit, Carolina Transformer is still precedential law.

The above legal theory may apply to some of the Defendants, many of which have undergone multiple corporate reorganizations. EPA has updated its corporate research for the Defendants herein, and will conduct additional investigations in the form of CERCLA § 104(e) information requests to resolve outstanding successor questions, as necessary. EPA will amend the PRN, as appropriate, once any requested information has been reviewed.

Transporters: The liability of the Stampers as former operators under CERCLA Section 107(a)(2), 42 U.S.C. § 9607(a)(2), has been established by Kaiser Alum. & Chem. Corp. v. Catellus Dev’t Corp., 976 F.2d 1338 (9<sup>th</sup> Cir. 1992). See discussions in Sections III.C.2. and IV.B.1., *supra*

**D. Legal Basis for Filing Complaint Seeking Injunctive Relief Under CERCLA § 106, 42 U.S.C. § 9606**

CERCLA § 106(a), 42 U.S.C. § 9606(a), provides the legal basis for injunctive relief to perform response activities at a site and provides in pertinent part:

In addition to any other action taken by a State or local government, when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or to the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

**Evidence and Support**

The Site Investigation for the Site documented the release, (through, for example, leaking, emitting, discharging, and escaping) of hazardous substances (including, PCBs, PAHs, mercury, lead, and chromium, which are designated hazardous substances pursuant to 40 C.F.R. Part 302), into the environment (onto the land, surface water and into the groundwater) at the Site. [hrs record]

Authority to find that “there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility” was delegated from the President to the Administrator of

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

EPA by Executive Order 12580 (52 Fed. Reg. 2,923 (January 29, 1987)) and from the EPA Administrator to the Director of the Hazardous Site Cleanup Division, by EPA Delegation 14-14-A. The Director of the Hazardous Site Cleanup Division is expected to make such a determination in the ROD for OU-1, which EPA intends to issue in late 2008.

The meaning of an "imminent and substantial endangerment to the public health or welfare or to the environment because of an actual or threatened release of a hazardous substance from a facility" determination was clarified by the court in United States v. Conservation Chemical, 619 F. Supp. 162 (W.D. Mo. 1985) ("Conservation Chemical II"). The court held that:

- an "endangerment" is not an actual harm, but a threatened or potential harm;
- the United States must prove only that there may be an endangerment, not that there is an endangerment;
- an endangerment is "imminent" if the factors giving rise to it are present, even though harm may not be realized for years;
- an endangerment is "substantial" if there is reasoned cause for concern that someone or something may be exposed to a risk of harm by a release or threatened release of a hazardous substance; and,
- the endangerment may be to the public health or public welfare or the environment.

Therefore, the court in Conservation Chemical II, 619 F. Supp. at 175, 196-197 concluded that "there may be an 'imminent and substantial endangerment' when - numerous hazardous substances are present at and being released into the environment from a facility that is accessible to humans and other living organisms."

The Site Assessment for the Site supports an "imminent and substantial endangerment" determination. [hrs record]

## **XII. SPECIAL NEEDS FOR HEADQUARTERS AND DEPARTMENT OF JUSTICE**

### **A. Legal**

1. DOJ Trial attorney:
2. EPA ORC attorney: Andrew Goldman - (215) 814-2487

### **B. Technical**

1. Current RPM: Christopher Sklaney - (215) 814-3198

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

2. Site Assessment Manager: Lorie Baker – (215) 814-3355

**C. Civil Investigator**

1. Kenneth I. Rose III – (215) 814-3147

**D. Witnesses**

Should this case proceed to litigation, the following witnesses, at a minimum, would be needed:

1. Christopher Sklaney, RPM, would testify as to the hazardous substances which have come to be located at the Site.
2. Lorie Baker, an EPA site assessment manager, would testify as to the hazardous substances located at the Site, human health risk and the ecological risk associated with the Site.
3. XXXXXX, Cost Recovery, would testify as to the amount of response costs incurred by EPA, not inconsistent with the NCP.
4. Kenneth I. Rose III, Civil Investigator, would testify to the investigation of the PRPs.

**XIII. LIST OF ATTACHMENTS**

**METRO CONTAINER SUPERFUND SITE  
PRE-REFERRAL NEGOTIATION SUPPORTING DOCUMENTATION INDEX**

1. List of Defendants (Owner/Operator, Arrangers, Transporters), for the purposes of a CERCLA §§ 106 or 107 action;
2. Draft Consent Decree for RI/FS for the Metro Container Superfund Site;
3. Map of Metro Container Superfund Site;
4. Deed conveying Site property to xxxxx;
5. Deed conveying Site property to xxxxx;
6. Deed conveying Site property to xxxxxx;
7. Deed conveying portion of Site property to xxxxx;
8. Deed conveying Site property to xxxxx;
9. Title Search Report generated by Chenega dated xxx
10. Response of Stauffer Management Company to EPA's Information Request, dated xxxxx, 2012;
36. New York Department of State, Bayer CropScience, Inc., printed January 27, 2006;
40. Bayer Crop Science, Facts and Figures, [www.bayercropscience.com](http://www.bayercropscience.com), printed April 21, 2008;
41. Bayer CropScience AG, Fact Sheet, [www.Hoovers.com](http://www.Hoovers.com), printed January 27, 2006;
42. Bayer CropScience AG, [www.Hoovers.com](http://www.Hoovers.com), printed March 9, 2007;
44. New York Department of State, Corporate Record, Bayer CropScience, Inc., printed February 28, 2007;
45. "Aventis, new world leader in life sciences, launched today," Aventis Press Release, December 15, 1999;
46. "Bayer Acquires Aventis CropScience," Bayer Press Release, October 2, 2001;

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

47. "Closing of Aventis CropScience acquisition," Bayer Press Release, June 3, 2002;
48. "Bayer Corporation," Fact Sheet, [www.Hoovers.com](http://www.Hoovers.com), printed May 2, 2007;
49. "2006 a record year for Bayer," Bayer Press Release, [www.bayerus.com](http://www.bayerus.com), March 15, 2007;
50. California Secretary of State, Stauffer Chemical Company, Corporation Number 0024600, printed January 27, 2006;
51. California Secretary of State, Stauffer Chemical Company, Corporation Number 0276948, printed January 27, 2006;
52. Civil Litigation Report, Stauffer Chemical Company Site, Burtonville, Virginia, September 30, 2002;
53. California Secretary of State, Stauffer Chemical Company, printed July 23, 2008;
54. "Imperial Set to Buy Stauffer," New York Times, June 6, 1987;
55. "Unilever To Sell Stauffer Chemical," Chicago Tribune, June 6, 1987;
56. "Stauffer Purchase Lands ICI in US Big League," Journal of Commerce, June 8, 1987;
57. "Akzo Will Buy Stauffer Unit," New York Times, June 23, 1987;
58. "Imperial Set to Sell More Stauffer Units," New York Times, June 23, 1987;
59. "Imperial Chemical to Sell Some Stauffer Units," Chicago Tribune, June 23, 2007;
60. "Chemical Briefs," Journal of Commerce, October 31, 1988;
61. "ICI's Identity Problem in the U.S." Guardian, September 24, 1987;
62. Purchase Agreement between Imperial Chemical Industries, PLC and Azko N.V., September 19, 1987;
63. Delaware Corporations, Abstract Detail, Stauffer Specialty Food Products Company, Inc., printed July 18, 2008;
64. Response of Zeneca, Inc. to EPA's Information Request for the West Virginia Ordnance Works Superfund Site, October 31, 1996;
65. Delaware Corporations, Abstract Detail, Rhone-Poulenc Basic Chemicals Co., printed July 18, 2008;

*Metro Container Corporation Superfund Site  
Pre-Referral Negotiation Report*

66. Excerpt from Rhone-Poulenc, Inc. 1988 Annual Report, p. F-12, discussing acquisition of Stauffer Chemical, Inc. by Rhone-Poulenc.
67. Dun and Bradstreet Report on Rhone-Poulenc, Inc., printed January 26, 1996;
68. Purchase agreement by and between the ICI Group and Rhone-Poulenc, Inc., dated December 2, 1987;
69. Delaware Corporations, Abstract Detail, Stauffer Basic Chemical Holdings, Inc., printed February 16, 2007;
70. New York Department of State, Corporate Record, Aventis CropScience USA, Inc., printed March 29, 2002;
71. Gibson, David, "The Industry Rejiggers its Lineup," Chemical Week, Vol: 140, January 14, 1987;
72. Ponds, A Rich Heritage," excerpt from www.Unilever.com, printed March 9, 2007;
73. "Profits Climb at Unilever," New York Times, August 8, 1987;
74. "1980s, Focusing on the Core," excerpt from www.Unilever.com, printed March 9, 2007.
- 75.